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JUN 1 2016

No. 15-777

IN THE

Supreme Court of the United States

SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC., AND SAMSUNG TELECOMMUNICATIONS AMERICA, LLC,

Petitioners,

v.

APPLE INC.,

Respondent

On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

JOINT APPENDIX
VOLUME I of II

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UNITED STATES DISTRICT COURT,
N.D. CALIFORNIA,
SAN JOSE DIVISION

Case No. 5 11–CV–01846–LHK

APPLE INC.,

v

SAMSUNG ELECTRONICS CO., LTD.,

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
4/15/2011	1	Complaint (with jury demand) against Samsung Electronics America, Inc., Samsung Electronics Co. Ltd., Samsung Telecommunications America, LLC *** Filed by Apple Inc ***
6/16/2011	75	Amended Complaint *** against Samsung Electronics America, Inc., Samsung Electronics Co. Ltd., Samsung Telecommunications America, LLC. Filed by Apple Inc.. ***
6/30/2011	80	Samsung Entities' Answer to Amended Complaint of Apple Inc., Counterclaim by Samsung Entities against Apple Inc. by Samsung Telecommunications America, LLC, Samsung Electronics America, Inc., Samsung Electronics Co. Ltd. ***

DATE	NO.	PROCEEDINGS
4/7/2012	857-5	*** [March 22, 2012 Expert Report of Terry Musika -- Under Seal Version Lodged With Court]
5/18/2012	940	*** Apples Motion To Exclude Testimony Of Samsungs Experts filed by Apple Inc. *** [Under Seal Version Lodged With Court]
5/18/2012	940-1	*** Apples Motion To Exclude Testimony Of Samsungs Experts filed by Apple Inc. *** [Public Redacted Version]
5/31/2012	999	*** Samsung's Opposition to Apple's Motion to Exclude Expert Testimony *** [Under Seal Version Lodged With Court]
5/31/2012	999-2	*** Samsung's Opposition to Apple's Motion to Exclude Expert Testimony *** [Public Redacted Version]
6/7/2012	1059	*** Apply's Reply to Samsung's Opposition to Apple's Motion to Exclude Opinions of Certain of Samsung's Experts filed by Apple Inc. *** [Under Seal Version Lodged With Court]
6/7/2012	1059-1	*** Apply's Reply to Samsung's Opposition to Apple's Motion to Exclude Opinions of Certain of Samsung's Experts filed by Apple Inc. *** [Public Redacted Version]

DATE	NO.	PROCEEDINGS
6/12/2012	1089	*** Apple's Opening Design Patent Claim Construction Brief *** [Under Seal Version Lodged With Court]
6/12/2012	1089-3	*** Apple's Opening Design Patent Claim Construction Brief *** [Public Redacted Version]
6/12/2012	1090	*** Samsung's Opening Claim Construction Memorandum *** [Under Seal Version Lodged With Court]
6/12/2012	1090-1	*** Samsung's Opening Claim Construction Memorandum *** [Public Redacted Version]
6/26/2012	1136	*** Apple's Response To Samsung's Opening Memorandum Regarding Design Patent Claim Construction by Apple Inc. ***
6/26/2012	1139	*** Samsung's Opposition to Apple's Claim Construction Brief *** [Under Seal Version Lodged With Court]
6/26/2012	1139-3	*** Samsung's Opposition to Apple's Claim Construction Brief *** [Public Redacted Version]
6/30/2012	1157	Order Granting in Part and Denying in Part Motions to Exclude Expert Testimony Signed by Judge Lucy H. Koh on 6/29/2012. ***

DATE	NO.	PROCEEDINGS
7/3/2012	1177	*** Apples Reply Regarding Design Patent Claim Construction filed by Apple Inc. ***
7/25/2012	1322	*** Samsung's Unsealed Trial Brief and Exhibits Thereto ***
7/25/2012	1323	Trial Brief by Apple Inc. ***
7/25/2012	1343	Unredacted Apple Reply ISO Motion to Exclude Testimony of Samsung Experts ***
7/26/2012	1352	Reply in Support of Opening Memorandum re Claim Construction by Samsung ***
7/27/2012	1425	Order Regarding Design Patent Claim Construction. Signed by Judge Lucy H. Koh on 7/27/2012 ***
7/29/2012	1447	Order Amending Design Patent Claim Construction. Signed by Judge Lucy H. Koh on 7/29/2012 ***
8/2/2012	1546	Transcript of Proceedings held on 07-30-12, before Judge Lucy H. Koh. ***
8/2/2012	1547	Transcript of Proceedings held on 07-31-12, before Judge Lucy H. Koh. ***
8/7/2012	1610	Transcript of Proceedings held on 08-03-12, before Judge Lucy H. Koh. ***

DATE	NO	PROCEEDINGS
8/7/2012	1611	Transcript of Proceedings held on 08-06-12, before Judge Lucy H. Koh. ***
8/7/2012	1612	Transcript of Proceedings held on 08-07-12, before Judge Lucy H. Koh. ***
8/13/2012	1694	*** Revised (Disputed) Joint Proposed Jury Instructions For After The Close Of Evidence ***
8/13/2012	1695	Transcript of Proceedings held on 08-10-12, before Judge Lucy H. Koh. ***
8/19/2012	1839	Transcript of Proceedings held on 08-13-12, before Judge Lucy H. Koh. ***
8/19/2012	1840	Transcript of Proceedings held on 08-14-12, before Judge Lucy H. Koh. ***
8/19/2012	1841	Transcript of Proceedings held on 08-15-12, before Judge Lucy H. Koh. ***
8/19/2012	1842	Transcript of Proceedings held on 08-16-12, before Judge Lucy H. Koh. ***
8/19/2012	1843	Transcript of Proceedings held on 08-17-12, before Judge Lucy H. Koh. ***
8/21/2012	1889	Reformatted Final Exhibit List. Signed by Judge Lucy H. Koh on 8/21/12 ***

DATE	NO.	PROCEEDINGS
8/21/2012	1903	Final Jury Instruction[s] *** Signed by Judge Lucy H. Koh on 8/21/12 ***
8/24/2012	1931	Amended Jury Verdict ***
9/24/2012	1997	Transcript of Proceedings held on 08-21-12, before Judge Lucy H. Koh. ***
9/24/2012	1998	Transcript of Proceedings held on 08-20-12, before Judge Lucy H. Koh. ***
9/24/2012	1999	Transcript of Proceedings held on 08-24-12, before Judge Lucy H. Koh. ***
10/2/2012	2013	Motion for Judgment as a Matter of Law, New Trial and/or Remittitur Pursuant to Federal Rules of Civil Procedure and 50 and 59 by Samsung ***
10/19/2012	2050	Opposition to (2013 Motion for Judgment as a Matter of Law, New Trial and/or Remittitur Pursuant to Federal Rules of Civil Procedure 50 and 59) filed by Apple Inc ***
11/9/2012	2131	Reply (re 2013 Motion for Judgment as a Matter of Law, New Trial and/or Remittitur Pursuant to Federal Rules of Civil Procedure 50 and 59) filed by Samsung ***

DATE	NO.	PROCEEDINGS
1/29/2013	2220	Order by Judge Lucy H. Koh granting in part and denying in part 2013 Motion for Judgment as a Matter of Law ***
3/1/2013	2271	Order by Judge Lucy H. Koh granting in part and denying in part 1819 Motion for Judgment as a Matter of Law; temporarily granting in part and denying in part 2002 Motion for Judgment as a Matter of Law ***
8/30/2013	2386-2	*** [2013] Expert Report of Julie L. Davis *** [Under Seal Version Lodged With Court]
9/25/2013	2454-6	*** [March 22, 2012 Expert Report of Terry Musika -- Public Redacted Version]
10/29/2013	2607-3	*** [2013] Expert Report of Julie L. Davis *** [Public Redacted Version]
11/14/2013	2738	Transcript of Proceedings held on 11-12-13, before Judge Lucy H. Koh. ***
11/14/2013	2739	Transcript of Proceedings held on 11-13-13, before Judge Lucy H. Koh. ***
11/18/2013	2784	Final Jury Instructions. Signed by Judge Lucy H. Koh on 11/18/2013 ***
11/18/2013	2789-1	*** Joint Submission of Final Admitted Trial Exhibit List ***

DATE	NO.	PROCEEDINGS
11/21/2013	2822	Jury Verdict. ***
12/3/2013	2840	Transcript of Proceedings held on 11-14-13, before Judge Lucy H. Koh. ***
12/3/2013	2841	***Sealed Unredacted***Transcript of Proceedings held on 11-15-13, before Judge Lucy H. Koh. ***
12/3/2013	2842	Redacted Transcript of Proceedings held on 11-15-13, before Judge Lucy H. Koh. ***
12/3/2013	2843	Transcript of Proceedings held on 11-18-13, before Judge Lucy H. Koh. ***
12/3/2013	2844	Transcript of Proceedings held on 11-19-13, before Judge Lucy H. Koh. ***
12/3/2013	2845	Transcript of Proceedings held on 11-20-13, before Judge Lucy H. Koh. ***
12/3/2013	2846	Transcript of Proceedings held on 11-21-13, before Judge Lucy H. Koh. ***
12/13/2013	2877	*** Samsung's Notice of Motion And Motion For Judgment as a Matter of Law, New Trial and/or Remittitur Pursuant to Federal Rules of Civil Procedure 50 and 59 filed by Samsung ***

DATE	NO.	PROCEEDINGS
12/14/2013	2881-2	*** Samsung's Motion for Judgment as a Matter of Law, New Trial, and/or Remittitur (Under Seal) ***
1/6/2014	2908-3	*** Redacted Apple Inc.'s Opposition to Samsung's Motion for JMOL, New Trial, and/or Remittitur ***
1/6/2014	2908-4	*** Unredacted Apple Inc 's Opposition to Samsung's Motion for JMOL, New Trial, and/or Remittitur ***
1/13/2014	2921-3	*** Redacted Version of Reply In Support of Samsung's Motion For Judgment as a Matter of Law, New Trial and/or Remittitur ***
1/13/2014	2921-4	*** Unredacted Version of Reply In Support of Samsung's Motion For Judgment as a Matter of Law, New Trial and/or Remittitur ***
2/7/2014	2947	Order by Judge Lucy H Koh denying 2876 Apple's Motion for Judgment as a Matter of Law; denying 2877 Samsung's Motion for Judgment as a Matter of Law ***
3/6/2014	3017	Final Judgment Signed by Judge Lucy H. Koh on 3/6/2014 ***
3/6/2014	3018	Notice of Appeal to the Federal Circuit as to 3017 Judgment by Samsung ***

DATE	NO.	PROCEEDINGS
3/24/2014	3052	Document E-filed Under Seal *** [April 20, 2012 Corrected Expert Report of Michael J. Wagner]
9/24/2014	3198	*** Redacted Version of Corrected Expert Report of Michael J. Wagner ***
8/25/2015	3264	Letter from Harold J. McElhinny [requesting entry of partial final judgment for Apple Inc.] ***
9/1/2015	3271	Opinion of U.S Court of Appeals for the Federal Circuit as to 3018 Notice of Appeal ***
9/1/2015	3272	Case Management Order. Signed by Judge Lucy H. Koh on September 1, 2015 ***
9/1/2015	3273	Mandate of USCA as to 3018 Notice of Appeal ***
9/18/2015	3290	Partial Final Judgment. Signed by Judge Lucy H. Koh on September 18, 2015 ***
3/22/2016	3472	Order by Judge Lucy H. Koh granting 3467 Samsung's Emergency Motion to Stay All Proceedings ***

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

14-1335, 15-1029

APPLE INC.,

v

SAMSUNG ELECTRONICS CO., LTD.,

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
3/10/2014	1	Appeal docketed. ***
5/23/2014	34	Brief Filed for Appellants Samsung Electronics America, Inc., Samsung Electronics Co., Ltd. and Samsung Telecommunications America, LLC [33]. Title: Opening Brief for Defendants-Appellants ***
7/28/2014	80	Brief Filed for Appellee Apple Inc. [77]. Title: Opening Brief ***
9/5/2014	129	Brief Filed for Appellants Samsung Electronics America, Inc , Samsung Electronics Co., Ltd. and Samsung Telecommunications America, LLC [128]. Title: Corrected Reply Brief. ***

DATE	NO.	PROCEEDINGS
9/15/2014	139	Appendix Filed for Samsung Electronics America, Inc., Samsung Electronics Co., Ltd. and Samsung Telecommunications America, LLC [134], [133]. Title: Joint Appendix. ***
12/4/2014	151	Submitted after Oral Argument by Ms. Kathleen M. Sullivan for Samsung Electronics America, Inc., Samsung Electronics Co., Ltd. and Samsung Telecommunications America, LLC and William F. Lee for Apple Inc.. Panel: Judge: Prost , Judge: O'Malley , Judge: Chen.
5/18/2015	158-1	Opinion and Judgment filed. The judgment or decision is: Affirmed-in-part, Reversed-in-part, Vacated-in-part and Remanded. (Precedential Opinion). (For the Court: Prost,Chief Judge; O'Malley,Circuit Judge and Chen,Circuit Judge).
6/17/2015	159	Petition for en banc rehearing filed by Appellants Samsung Electronics America, Inc., Samsung Electronics Co , Ltd. and Samsung Telecommunications America, LLC. ***
7/16/2015	204	The court invites a response from Appellee Apple Inc. to the petition for en banc rehearing filed by Appellants in 14-1335
7/20/2015	205	Response of Appellee Apple Inc to the petition for en banc rehearing

DATE	NO.	PROCEEDINGS
		[159] filed by Appellants Samsung Electronics America, Inc., Samsung Electronics Co., Ltd. and Samsung Telecommunications America, LLC in 14-1335. ***
8/13/2015	207	Order filed denying [159] petition for en banc rehearing filed by Samsung Electronics America, Inc., Samsung Electronics Co., Ltd. and Samsung Telecommunications America, LLC. By: En Banc (Per Curiam). ***
8/19/2015	208	Motion of Appellants Samsung Electronics America, Inc., Samsung Electronics Co., Ltd. and Samsung Telecommunications America, LLC to stay execution of the mandate until the filing and disposition of Samsung's petition for a writ of certiorari and, if the petition is granted, until the Supreme Court's final disposition ***
8/20/2015	209	Response of Appellee Apple Inc. to the motion to stay mandate ***
8/21/2015	210	Reply of Appellants *** to response filed by Appellee [regarding motion to stay] ***
8/25/2015	211	Order filed denying [208] motion to stay mandate ***
8/25/2015	212	Mandate issued to the United States District Court for the Northern District of California. Service as of this date by Clerk of Court.

[1] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

[Filed 08/09/12]

Case No.: 11-cv-01846-LHK

APPLE INC., a California corporation,
Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., A Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,
Defendants.

SAMSUNG ELECTRONICS CO., LTD., A Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,
Counterclaim-Plaintiffs,

v.

APPLE INC., a California corporation,
Counterclaim-Defendant.

*** Highly Confidential – Attorneys' Eyes Only ***

Videotaped Personal Deposition of: Minhyouk Lee

March 2, 2012
Kim & Chang
Seoul, South Korea
9:03 A.M. – 3.47 P.M.

* * *

[69] BY MR. STERN:

Q. Were you involved in the design of the F700 in any way?

A. Oh, yes. I've looked at him do the design, and if he asks my opinion, I would give him my opinion, and we have discussions. That is the strength, the strong point of design in Samsung, not only in mobile, but for TV, washers, refrigerators, other products as well. Designers have a good system of collaborating with each other within Samsung.

Q. In designing the Galaxy S product, did you make use of the design of the F700 in any way?

MR. ZELLER: The question is vague

A. Well, there were many different designs, and the way I see it, whether it is the F700 or any other product for that matter, in this—everything in this world, every design in this world can be shared.

CHECK INTERPRETER: "There are many designs, and when it comes to design, from my perspective, irrespective of types of product, whether that might be F700 or a TV, all the design in this world shares certain commonality to a certain extent."

A. So regarding the F700, that was closely designed by SangMin Hyun and myself. Just a few meters away on the next seat, I saw him design it, and we had [70] many discussions on this F700.

LEAD INTERPRETER: Okay. I would like to clarify and correct a little bit of the previous translation by clarifying with the witness that, "I was seated very close to this person, so I saw him design at a close proximity. So although I don't know the full history of

this design, I do know certain perspectives of the design of this phone."

BY MR. STERN:

Q. Okay. My question actually was a little bit different.

At the time you designed the Galaxy S phone, you were aware of the F700, correct?

A. Yes, when I was designing, I knew it.

Q. In designing the Galaxy S, did you consciously draw on the design of the F700 in any way as a source of reference or inspiration for your work?

MR. ZELLER: The question is vague.

A. The F700, well not only this one, but before that, long before, there were many other products, so I cannot just limit it to this one.

CHECK INTERPRETER: "I don't think you can limit this to one product, F700. Even before F700, there are many different products, and I don't think you can really limit it to F700. That would be very vague to do."

[71] BY MR. STERN:

Q. When you designed the Galaxy S, did you intend to implement the design of the F700 in the Galaxy S?

MR. ZELLER: The question is vague as to "implement."

A. Well, regarding the Galaxy S, whether or not we implemented or did not implement, it is a continuum of many designs that could be whether it's my own philosophy, my own independent philosophy, or Samsung's values. I don't lean towards a particular

product. That's not the only thing I consider in all my designs.

CHECK INTERPRETER: "Rather than saying that F700 was implemented or not in Galaxy S, it is more accurate to say that it is an extension of my accumulated designs, and I have my own person philosophy as well as reflecting Samsung's value standard. I did not focus in only on one particular product or look at it specifically, and that was the cases for all of my designs."

BY MR. STERN.

Q. But if someone came up to you and asked, "Where did you get the idea for the design of the Galaxy S," your answer would not be "The F700," correct?

MR. ZELLER: This has been asked and answered, misstates the witness' testimony.

A. The design is my own independent design. It's [72] not whether I am—I get influenced from this or that. It spurs off for my own design philosophy, that's—and also in terms of must be reliable in terms of manufacturing, in addition, beautiful and productive as well. There's many perspectives that you have to view it.

Just because the shape is the same, you cannot say it's the same. You build it up from the beginning; it's built up and develops so forth It's not appropriate to pick up discussion on a particular model. I don't think that is a topic of discussion.

CHECK INTERPRETER: "The design is my own independent one. It's not whether or not I get influence from this or that. It spurs off from my own design philosophy, and that also needs to be considered with

manufacturability as well as the reliability issues. Of course, I'm going to design—the beautiful design could be part of it too, but you also have to consider productability. So there are many different things that you could—you should consider from different perspectives.

"Just because it appears—or looks similar, you cannot draw the conclusion because you have to consider that how it was built up from the beginning and how it was made. So I don't think it is appropriate to discuss it over—based on one particular model, whether

* * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

[Filed 09/25/13]

Case No. C-11-01846 LHK

APPLE INC., a California Corporation,

Plaintiff,

v

SAMSUNG ELECTRONICS CO , LTD , a Korean business entity, SAMSUNG ELECTRONICS AMERICA, INC , a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

EXPERT REPORT OF TERRY L. MUSIKA, CPA

SUBJECT TO PROTECTIVE ORDER HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY

* * *

Infringer's Profits

138. I understand that assuming infringement, a design patent owner may choose to recover the infringer's profit under §289 or one of the remedies relating to utility patents that were discussed above under 35 U.S.C §284. However, the design patentee's damages are limited to only one form of damage and the patentee may not recover both a lost profit and infringer's profit for the same unit. The infringer's

total profits are equal to the total sales of infringing product less the costs directly associated with the accused sales. It is the patentee's burden to establish the sales of accused products and the infringer's burden to establish the costs related to the accused sales.[127]

139. An owner of trade dress and trademark rights has the ability to recover the profits obtained by a person who violates those rights. It is the plaintiff's obligation to prove the revenues obtained for products that use the relevant intellectual property and the defendant's obligation to prove any costs and other allocations associated with the product and the relevant intellectual property.

140. As previously discussed, I have approached the overall damage calculation in a sequential manner to avoid an incorrect duplication of damages. I first calculated a lost profits remedy on accused products that qualified for a lost profits remedy. Next, I calculated an infringer's profits remedy on all accused products that qualify for an infringer's profit for which a previous lost profits amount has not been calculated.

141 The first step in the calculation of infringer's profits was identifying the Samsung units accused of infringing the design patents and the revenue associated with those. The individual Samsung products accused of infringing the individual Apple design patents are identified on Exhibit 4 Next, I determined the actual number of units that qualified for infringer's profits after removing those units for which a lost profit damage was calculated The determination of the units available for infringer's

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[127] Weil, Frank, Huges, and Wagner, Litigation Services Handbook, Fourth Edition, 2007, p 22 32

profits after removing the units for which a lost profits remedy was calculated is displayed on **Exhibit 17.2**.

142. Next, the sales amounts from **Exhibit 17.2** are listed on **Exhibit 17.3** as Samsung's infringing profit for each product. As stated above, Apple has the burden of identifying the accused revenue portion of infringer's profits. It is Samsung's burden to identify any related costs.

143. I have reviewed Samsung's document production and testimony concerning any alleged costs associated with the sale of accused items and have provided my own calculation of the costs associated with the accused revenue. Although the document production in this matter by both Apple and Samsung has been voluminous, I understand that Samsung's production of an Excel spreadsheet on February 3, 2012, bates numbered SAMNDCA00323946, that was also marked as Exhibit 1920[128] to the Timothy Sheppard's 30(b)(6) deposition on February 29, 2012, constituted Samsung's first representation of the sales and profits of the accused devices. Based on my independent review of this document, I determined that it was mathematically incorrect in that the reported detailed sales by product did not equal the reported total sales for all products. Additionally, this document failed to include sales for all of the models accused by Apple. The excluded models were Samsung's Galaxy S II (AT&T edition, 4G), Galaxy S II (T-Mobile edition), Galaxy S II Epic 4G Touch, Galaxy S II Skyrocket (4G LTE), Galaxy S Showcase,

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[128] Counsel for Samsung stated at the Deposition of Timothy Sheppard on February 29, 2012 that Exhibit 1920 was superseded by additional production Deposition of Timothy Sheppard, February 29, 2012, pp 37 38.

Galaxy Tab 7.0, Galaxy Tab 10.1 LTE and Mesmerize.[129]

144. Samsung subsequently produced a second version of the same spreadsheet on or about February 28, 2012, Bates numbered SAMNDCA00354292, that was marked as Exhibit 1922 to the Timothy

* * *

150. My use of Samsung's worldwide manufacturing gross profit percentage is conservative and is potentially prejudicial to Apple in that it ignores any profits that may have been earned at the individual sales subsidiaries, SEA and STA. Therefore, it presumes that the higher retail sales amount reported by the U.S. sales subsidiaries is offset by both the cost of goods sold at a transfer price level and additional costs borne only at the U.S. sales subsidiary level. I expect to adjust my calculation and opinion regarding Samsung's profits on accused devices should additional information become available.

151 My final calculation of the resulting infringer's profit damage amount is displayed on **Exhibits 17 and 17.1** where I have calculated Samsung's accused revenue and adjusted gross profit.

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[129] I am aware that Apple has sought documents and other materials through a motion As noted above, my work is limited by the material presently available and I would incorporate additional information after it is received

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Subject to Protective Order

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

APPLE INC.

v.

SAMSUNG ELECTRONICS CO., LTD et al.

Corrected Expert Report of Michael J. Wagner
April 20, 2012
Volume 1

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* * *

41. The 'D305 Patent claims "[t]he ornamental design for a graphical user interface for a display screen or portion thereof, as shown and described." [78] The patent includes two drawing sheets, which are substantially similar to the first drawing sheet, the figure of which is reproduced below. Note that one of these drawing sheets was filed in color.[79]

42. The other drawing sheet shows the front view of a second embodiment of the design.[82] Furthermore, "[t]he broken line showing of a display screen in both views forms no part of the claimed design."[83]

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[78] 78 U S. Design Patent No D604,305 S [2 12]

[79] 79 U S Design Patent No D604,305 S [2.12]

[82] 82 U S Design Patent No D604,305 S. [2 12]

[83] 83 U S Design Patent No. D604,305 S [2 12]

44. The 'D087 Patent claims "[t]he ornamental design of an electronic device, substantially as shown and described." [86]The patent includes twelve drawing sheets and 48 figures, which are similar to figures one through eight reproduced below.

45. The 'D087 Patent explains that "[n]one of the broken lines form a part of the claimed design."[91] The patent explains further that[92]

> The broken lines showing the remainder of the electronic device are directed to environment. The broken lines, within the claimed design, in embodiments 1, 2, and 4 that depict an elongated oval shape and the broken lines, within the claimed design, in embodiments 2, 3, and 6 that depict a circle shape are superimposed on a continuous surface and are for illustrative purposes only. The broken lines, within the claimed design, in embodiments 1, 3, and 5 that depict a large rectangular shape, indicate a non claimed shape below the continuous front surface and are for illustrative purposes only.

47. The 'D677 Patent claims "[t]he ornamental design of an electronic device, as shown and described."[95] The patent includes two drawing sheets and eight figures, all of which are reproduced below.

48. The 'D677 Patent notes that "[t]he claimed surface of the electronic device is illustrated with the

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[86] 86 U S Design Patent No. D593,087 S [2 13]

[91] 91 U S Design Patent No D593,087 S, p 3 [2 13]

[92] 92 U S Design Patent No D593,087 S, p. 3 [2 13]

[95] 95 U S. Design Patent No D618,677 S [2 14]

color designation for the color black."[100] For clarification, the 'D677 Patent states that "the article of manufacture to which the ornamental design has been applied is an electronic device, media player (e g , music, video and/or game player), media storage device, a personal digital assistant, a communication dev ice (e.g , cellular phone), a novelty item or toy."[101] Furthermore, "[t]he electronic device is not limited to the scale shown..."[102]

* * *

A. Disagreements with the opinions expressed by Terry L. Musika

87. With respect to Mr. Musika's valuation of the damages suffered by Apple related to Samsung's alleged infringement, I offer the following opinions.

1. Mr. Musika's analysis is a high-level analysis and is largely divorced from the specific intellectual property that is at issue in this lawsuit.

88. Mr. Musika's analysis is generally at a very high level and is not tied to the specific intellectual property at issue in this lawsuit. This is most evident in Mr Musika's discussion of the benefits provided by the Design IP. Mr. Musika consistently refers to "the importance of design in consumer demand" and the importance of design to Apple. [208] While I do not disagree that design is important to Apple and that consumers do care about what a product looks like, Mr.

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[100] 100 U S Design Patent No D618,677 S. [2 14]

[101] 101 U S Design Patent No D618,677 S [2.14]

[102] 102 U.S Design Patent No D618,677 S [2 14]

[208] Musika Report, pp 82-84. [2.2]

Musika's discussion is not properly tied to the value of the limited *specific* Design Patents, Trade Dress, and Trademarks at issue in this lawsuit.

89. It is conceptually wrong to assume that the limited number of design patents, trade dress and trademarks of Apple that is a small subset of all of Apple's design intellectual property contains 100% of the value of Apple's design intellectual property. It is also incorrect to assign the same value to this limited subset of Apple's design intellectual property, and assign the same royalty rate, whether one item of this bundle of intellectual property is used or all of it is used by Samsung.

a) Mr. Musika fails to provide evidence of demand for the specific design IP at issue.

90. Mr. Musika claims that he "identified and documented numerous examples of demand for each item of Apple Intellectual Property In Suit for which Apple is seeking a lost profit on Exhibits 24 and 25." [209] His Exhibit 24 contains numerous citations to documents that he claims "demonstrate the importance of design in consumer demand." [210] The citations in his Exhibit 24 are general citations to the concept that design is valued. For example, Mr. Musika's comment #18 on the Exhibit 24 reads, "The iPhone is a delight to the eye ."[211] Or, in his comment #53, Mr Musika quotes Samsung, "Overall, the iPhone 3GS was rated better than other devices in overall design ." [212] These

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[209] Musika Report, p 38 [2 2]

[210] Musika Report, p. 82, Exhibit 24 [2 2]

[211] Musika Report, p 82, Exhibit 24, Comment #18. [2 2]

[212] Musika Report, p 82, Exhibit 24, Comment #53 [2 2]

citations do not provide any evidence that consumers demand the *specific* teachings of Apple's design-related IP at issue in this lawsuit

In several instances, Mr. Musika just presents a picture of a device (such as an advertisement showing two fingers picking up the iPad 2 or a back of a phone with logo) in support of his conclusion.[213]

91 In addition, Mr Musika appears to ignore ample evidence presented in the documents cited in Exhibit 24 that there are more important factors than design that affect consumer demand for smartphones and tablets. For example, Mr. Musika states in his Exhibit 24, comment #6 that "[b]etween Q4 2010 and Q4 2011, 44-50% of those surveyed noted attractive appearance and design as a very important attribute in the iPhone purchase decision."[214] However, Mr. Musika does not mention that the importance of "attractive appearance and design" was consistently rated lower in comparison to the importance of several other features, including easy to use, service and support, trust Apple brand, quality of apps, battery life, good value for price paid, web capabilities, the ability to download and use apps, and multitasking.[215]

92. Similarly, in his comment #7, Mr. Musika points out that "32% of those surveyed in the U.S liked the physical appearance and design as a reason that swayed them to purchase iPhone over Android."

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[213] Musika Report, Exhibit 24, Comments #13, #14, and #29 [2 2]

[214] Musika Report, Exhibit 24, Comment #6 [2 2]

[215] Schedule 8.3 [1 2] Some of these features were not listed in every quarter, but each feature had a higher percentage of survey respondents rating it as "very important" to their purchase decision when the feature was included in the survey

[216] However, 41 percent and 34 percent of those surveyed in the U.S., respectively, named trust in Apple brand and a desire to easily transfer music, apps, video, contacts, etc., onto iPhone as reasons for buying iPhone after considering Android.[217]

93. In his comment #8, Mr. Musika states that "[t]he 7th top reason for buying an iPhone is for better appearance/design (37%); better appearance/design is listed 10th top reason for buying an Android-based smartphone (27%)." [218] However, trust in Apple brand (56%), latest technology (47%), touchscreen (45%), a large variety of apps (42%), ease of use (42%) and a desire to stay with current service provider (38%) were more frequently mentioned than better appearance and design as reasons for buying an iPhone. [219] Better appearance and design was the last out of 10 top reasons for purchasing an Android-based smartphone.[220]

94. According to Mr. Musika's comment #45, "Samsung describes "Design" as a main feature of the Galaxy S II in its internal presentation. [221] However, Design is just one of the Galaxy S II's features highlighted in the presentation. [222] Samsung also emphasizes the "ultra vivid and bright" display of the

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[216] Musika Report, Exhibit 24, Comment #7 [2.2]

[217] iPhone Owner Study, May 2011, APLNDC-Y0000025024-147 at '060 [3 16]

[218] Musika Report, Exhibit 24, Comment #8 [2.2]

[219] Smartphone Market Study US, January 2011, APLND C0001434059-154 at '143-144 [3 17]

[220] Smartphone Market Study US, January 2011, APLND C0001434059-154 at '144. [3 17]

[221] Musika Report, Exhibit 24, Comment #45. [2 2]

[222] Samsung Galaxy S II Presentation, SAMNDCA10775587-624 at '593 [3 19]

Galaxy S II, its "powerfully fast" performance and "rich and convenient" content. [223] In fact, in a section entitled "Main Features" of the Galaxy S II, Samsung dedicates only one slide to the description of the Galaxy S II's design, stating that it is "Slim and Light." [224] The other 10 slides of this section highlight the Super AMOLED Plus display, Dual Core Application Processor, More Powerful Battery, Ultrafast Download Speeds, Voice Solution and 4 Hubs capabilities of the Galaxy S II.[225]

(1) Apple's recognized design lead indicates that the design-related IP at issue is a small element of the "design" that is consistently referenced by Apple's experts.

95. Even after Samsung has allegedly incorporated into its products the design-related IP at issue in this lawsuit, Apple still retains a widely recognized design advantage over Samsung. This indicates that the importance of design referred to by Mr. Musika and other Apple experts has little to nothing to do with the specific design-related IP at issue.

96. There is ample evidence that Apple's iPhones and iPads are rated significantly higher in overall design than Samsung's smartphones and tablets, even after Samsung is accused of infringement of the design-related IP. In an August 2010 report presenting the findings of Strategy Analytics' User Evaluation

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[223] Samsung Galaxy S II Presentation, SAMNDCA10775587-624 at '593 [3 19]

[224] Samsung Galaxy S II Presentation, SAMNDCA10775587-624 at '599 [3 19]

[225] Samsung Galaxy S II Presentation, SAMNDCA10775587-624 at '595-'598, '600-'605. [3.19]

of the iPhone 4, Strategy Analytics concluded that participants considered the design of the iPhone 4 to be very appealing.[226] Strategy Analytics further detailed that "[p]articipants felt the glass casing of the device made it look very sleek and modern, and was an improvement on the plastic casing of the 3G and 3GS models."[227] Participants also liked the visual appearance of the stainless steel band around the edge of the device.[228] The iPhone 4 also received high ratings for all attributes related to the display, including maximum rating for display resolution.[229]

97. In 2011 Wireless Mobile Phone studies conducted by J.D. Power and Associates, Apple is ranked significantly above the industry average (at 95 percent confidence level) in smartphone physical design.[230] According to the studies, "Apple outperforms all other manufacturers in the Physical Design factor" and "sets the bar for the competition with regard to

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[226] Mobile Device User Evaluation Apple iPhone 4, Strategy Analytics, August 2010, SAMNDCA00252302-329 at '309 [13 6]

[227] Mobile Device User Evaluation Apple iPhone 4, Strategy Analytics, August 2010, SAMNDCA00252302-329 at '309. [13 6]

[228] Mobile Device User Evaluation Apple iPhone 4, Strategy Analytics, August 2010, SAMNDCA00252302-329 at '309 [13.6]

[229] Mobile Device User Evaluation Apple iPhone 4, Strategy Analytics, August 2010, SAMNDCA00252302-329 at '322 [13 6]

[230] 2011 U S Wireless Mobile Phone Study Results Presentation Volume2, J D Power and Associates, November 15, 2011, SAMNDCA00282033-088 at '064 [13 7] *See also* 2011 Wireless Traditional Mobile Phone Satisfaction Study, Pre-Release Presentation V1, J D Power and Associates, March, 2011, SAMNDCA10340243-265 at '259 and '261 [13 8] *See also* 2011 Wireless Smartphone Satisfaction Study, Management Report, J D Power and Associates, March, 2011, SAMNDCA10246338-445 at '372, '378, '382 [13 9]

styling and screen quality " [231] As shown in Figure 22 below, Apple leads in all physical design attributes, including the visual appeal of wireless phone, size of display screen, brightness of background display screen lighting, and weight and size of wireless phone [232]

Figure 22 Physical Design Attribute Ratings Compared to Average[233]

Physical Design Attribute Ratings Compared to Average

Physical Design Index	7.86			7.82				
Visual appeal of wireless phone	8.16	8.63	8.28	7.87	7.95	7.89	7.79	7.67
Size of display screen	7.93	8.37	8.16	7.32	7.90	8.24	7.34	7.34
Brightness of background display screen lighting	8.14	8.45	8.27	8.15	7.83	8.09	7.82	7.80
Weight of phone (including battery)	7.73	8.00	7.77	7.95	7.71	7.11	7.67	7.68
Size of wireless phone	7.75	8.01	7.88	7.80	7.67	7.43	7.57	7.55

[illegible]

98 CNET's iPhone 4 product review praises the "handset's striking design "[234]

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[231] 2011 Wireless Smartphone Satisfaction Study, Management Report, J D Power and Associates, March, 2011, SAMNDCA10246338-445 at '384 [13 9]

[232] 2011 Wireless Smartphone Satisfaction Study, Management Report, J D Power and Associates, March, 2011, SAMNDCA10246338-445 at '388 [13 9]

[233] 2011 Wireless Smartphone Satisfaction Study, Management Report, J D Power and Associates, March, 2011, SAMNDCA10246338-445 at '388 [13 9]

[234] iPhone 4 0 Quick Report & Analysis, June 28, 2010, SAMNDCA00024872-941 at '890 [4 1]

With iPhone 4, Apple again shows that it's a powerful player in the smartphone wars It won't be for everyone, and AT&T remains a sticking point, but the handset's striking design, loaded feature set, and satisfying performance make it the best iPhone yet

99 An iPhone 4S press release emphasizes that "iPhone 4S has the same beautifully thin glass and stainless steel design that millions of customers around the world love "[235]

100 In an iPad 2 press release, dated March 2, 2011, Apple features "an entirely new design [of the iPad 2] that is 33 percent thinner and up to 15 percent lighter than the original iPad ." Steve Jobs is quoted as saying, "While others have been scrambling to copy the first generation iPad, we're launching iPad 2, which moves the bar far ahead of the competition and will likely cause them to go back to the drawing boards yet again."[236]

101 The attractive design of Apple's iPad is also discussed in a September 25, 2011 New York Times article "Apple also has a lead in design that will be tough to surmount People want to own its products because they are so good-looking " [237] This article is

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[235] Apple Press Info Apple Launches iPhone 4S iOS 5 & iCloud, October 4 2011, <http //www apple com/pr/library/2011/10/04Apple-Launches-iPhone-4S-iOS-5-iCloud html> accessed on October 10, 2011 [3 23]

[236] 'Apple Launches iPad 2 Apple Inc Press Release, March 2, 2011, <http //www apple com/pr/library/2011/03/02Apple-Launches-iPad-2 html>, accessed on April 5, 2012 [3 24]

[237] David Streitfeld Amazon Has High Hopes for its iPad Competitor N Y Times, September 25 2011 <http //www nytimes com/2011/09/26/technology/anticipated-amazon-tablet-to-take-aim-at-apple-ipad html?pagewanted=all>, accessed on April 6, 2012 [3 25]

cited as evidence that "attractive appearance and design is a similarly important driver of iPad purchasing decisions" by Sanjay Sood, one of Apple's experts, who addresses the importance of design. [238]Apparently, Mr. Sood did not realize that this article was written long after Samsung is accused of infringing the design-related IP at issue in this lawsuit.

102. An Argus Insights white paper on the iPad 2 launch draws the same conclusion, "the iPad family will continue to shine, and Apple will keep the lead on style and design."[239] Recently, in a March 12, 2012 interview with the London Evening Standard, Jonathan Ive, Apple's senior vice president of industrial design, explained Apple's goal as "to design and make better products."[240] "If we can't make something that is better, we won't do it," he said. [241] Apple also highlights the advanced design of its new iPad on its website, stating that "with its advanced

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[238] Expert Report of Sanjay Sood, March 22, 2012, p 24 [4.7] (Hereafter, "Sood Report")

[239]Argus Insights White Paper. iPad 2 Launch Report - Mapping the Customer Experience Landscape for the Tablet Market, April 5, 2011, SAMNDCA00237364-371 at '370 [4 2]

[240] Sir Jonathan Ive The iMan cometh, Mark Prigg meets Sir Jonathan Ive, the British man behind the design of Apple's iconic products, London Evening Standard, March 12, 2012, <http //www thisislondon.co uk/lifestyle/london-life/sir-jonathan-ive-the-iman-cometh-7562170.html>, accessed on April 6, 2012. [4 3]

[241] Sir Jonathan Ive: The iMan cometh, Mark Prigg meets Sir Jonathan Ive, the British man behind the design of Apple's iconic products, London Evening Standard, March 14, 2012, <http //www thisislondon co.uk/lifestyle/london-life/sir-jonathan-ive-the-iman-cometh-7562170 html>, accessed on April 6, 2012. [4 3]

design, breakthrough technology, and amazing built-in apps, iPad changes the way you work."[242]

103. If Mr. Musika's analysis is correct, one would not expect there to be any design advantage to Apple over Samsung because Samsung has used all of the value of Apple's designs according to his approach.

(2) The use of smartphone cases minimizes the importance of the design-related IP

104. The majority of iPhone owners prefer to protect their iPhones from any type of damage and use an iPhone case to reduce this risk. An iPhone case is the most used iPhone accessory in the U.S. According to the FY11-Q2 and FY11-Q3 iPhone Buyer Surveys, 71 percent of iPhone owners regularly use cases.[243]

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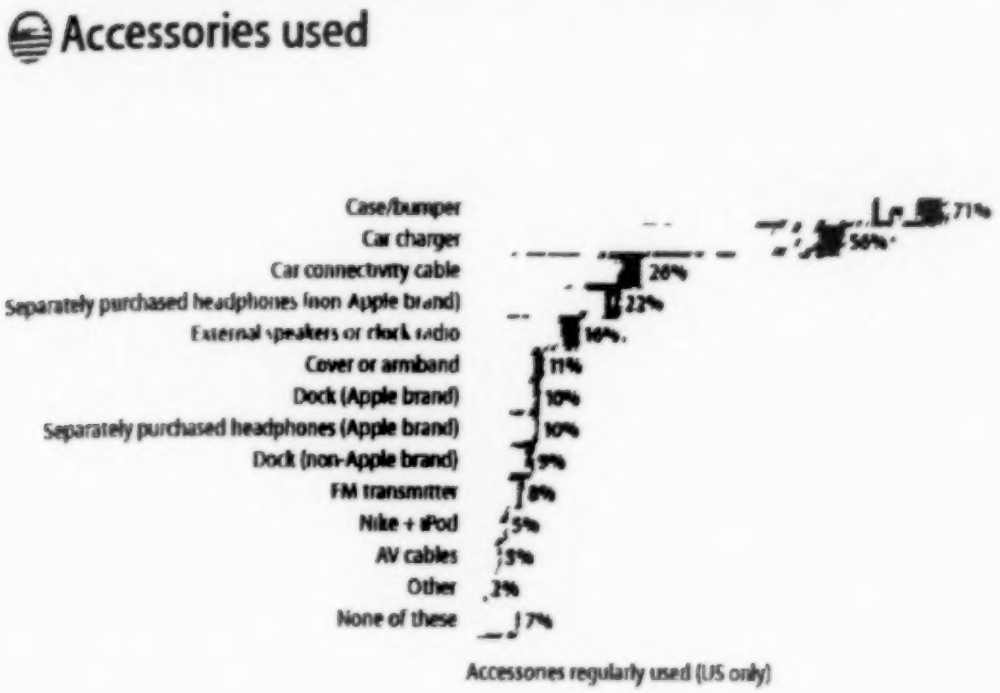
[242] Apple - The new iPad - It's brilliant from the outside in, <http://www.apple.com/ipad/>, accessed on April 6, 2012. [4.4]

[243] iPhone Buyer Survey, Apple Market Research & Analysis, FY11-Q2, APLNDC0000036266-348 at '345. [7.1] *See also* iPhone Buyer Survey, Apple Market Research & Analysis, FY11-Q3, APLNDC0000036172-265 at '262. [7.2]

Figure 23: Accessories Regularly Used[244]



105 Any protective iPhone cover would diminish the importance of the iPhone design because certain design elements related to the shape and appearance of the iPhone become covered in an iPhone case The fact that 71 percent of iPhone owners prefer to cover their iPhones in cases is evidence of the lack of value these iPhone owners place on at least some of the specific design elements at issue in this lawsuit

* * *

120 I address my disagreements with Mr. Musika's analysis of the first three *Panduit* factors in this

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[244] iPhone Buyer Survey, Apple Market Research & Analysis, FY11-Q2, APLNDC0000036266-348 at '345 [7 1] *See also* iPhone Buyer Survey, Apple Market Research & Analysis, FY11-Q3, APLNDC0000036172-265 at '262 [7 2]

section, and my disagreements with Mr Musika's calculation of the amount of lost profits in the next section

a) Mr. Musika has not provided sufficient evidence of demand for the intellectual property at issue

121 To determine whether and to what extent Apple lost sales, an analysis of the demand for the patented feature is the critical and economically relevant inquiry I understand that a 2009 opinion by the Federal Circuit in *Depuy Spine et al v Medtronic Sofam or Danek, Inc et al* indicates that the first Panduit factor is concerned only with the patented product and the focus on the patented feature goes to the availability of acceptable non-infringing substitutes under the second Panduit factor [271] However, I address the importance of the patented feature in this Panduit factor because if there is no demand for the feature, it can always be removed

122 Mr Musika calculates lost profits for the '381, '607, '915, and '163 Patents, the Electronic Device Design Patents, and all asserted trade dress [272] As I discuss in detail above, Mr Musika's evidence of demand for these intellectual property elements is not tied to the specific intellectual property at issue Therefore, Mr Musika has not satisfied the burden of

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[270] *Panduit Corp v Stahlin Bros Fibre Works, Inc*, 575 F 2d 1152, 1156, 1978 U S App LEXIS 11500, 197 U S P Q (BNA) 726 U S Court of Appeals for the Sixth Circuit, April 25, 1978, p 2 [12 1]

[271] *DePuy Spine, Inc v Medtronic Sofamor Danek, Inc*, CAFC, 567 F 3d 1314, June 1, 2009, pp 11-12, 21-22 [14 4]

[272] Musika Report, Exhibit 15 [2 2]

providing evidence of demand related to the patented feature

123 Further, Mr Musika has not provided any evidence that consumers would switch to a different smartphone brand or model based on the presence or absence of the accused functionalities or design Apple submitted two different expert reports that discuss the importance of design to Apple's products [273] and a third expert conducted two surveys that attempted "to determine the price premium, if any, that Samsung consumers are willing to pay for the features associated with the patents at issue " [274] None of these experts performed any study to determine whether any customers would switch their smartphone purchase decision if the accused functionality was removed, let alone how many would have switched

124 In his surveys, Mr Hauser uses conjoint analysis to provide an estimate for the value of certain functionalities [275] I understand that a properly constructed conjoint analysis can be used to estimate the effect on market share based on the presence and absence of specific functionalities, but apparently Apple did not ask for Mr Hauser to perform this type of analysis

(1) Limited Value to Functionalities Enabled by the Patents-in-Suit

125 I have reviewed iPhone / iPad buyer surveys commissioned by Apple, Samsung consumer surveys and focus groups, and third-party smartphone studies

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[273] Sood Report, p 2 [4 7] *See also* Expert Report of Russell S Winer, March 22, 2012, p 2 [4 6]

[274] Hauser Report, p 6 [2 33]

[275] Hauser Report, p 8 [2 33]

I found that the most important smartphone / iPhone /iPad functionalities that drive customer purchase decisions are different from those enabled by the Patents-in-Suit I also found that the most wanted smartphone features are different from those enabled by the Patents-in-Suit In addition, Apple and Samsung have not made use of the technology enabled by the Patents-in-Suit in their marketing and advertising materials

(a) Smartphone / iPhone / iPad / Tablet Consumers' Purchasing Factors

126 Apple considers customer preferences and consumer feedback and conducts monthly surveys of iPhone buyers [276] In its July and November 2007 reports, Apple concluded that "[t]op features leading to an iPhone purchase include advanced capabilities in a well designed convergent device" [277] The top reason for purchase of an iPhone 3G was "the need for a combination music, email and Web device" [278] "iPhone buyers want[ed] an easy to use integrated device with Web capabilities," Apple noted in its

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[276] iPhone Buyer Survey, APLNDC0001218489-608 at '491 [5 36]

[277] iPhone Early Buyer Wave 1 Final Report, Apple Market Research & Analysis, July 2007, APLNDC-Y0000029092-135 at 095 [3 18] *See also* iPhone Buyer Wave 2 Final Report November 2007, Apple Market Research & Analysis, November 2007, APLNDC-Y0000029136-204 at '139 [5 37]

[278] iPhone 3G Buyer Survey, Apple Market Research & Analysis November 14, 2008, APLNDC-Y0000027600-675 at 608 [5 38] *See also* iPhone 3G Buyer Survey, Apple Market Research & Analysis FY09-Q1, APLNDC-Y0000026173-256 at '182 [6 1]

FY2009-Q1 iPhone 3G Buyer Survey [279] Apple reached the same conclusion in later iPhone buyer studies [280]

> By far, iPhone buyers want a mobile phone that combines email, Web, music, and downloadable games and other applications [281]
>
> The desire for a combination device that included phone, music, email, Web, and games and apps was the main purchase motivator for a large segment of iPhone buyers [282]

127 In a February 2010 iPhone Owner Study, Apple stated that "Internet capabilities and being a combination device (phone, Internet, and iPod) were the most important features or attributes at time of purchase ."[283] According to surveys fielded during FY2010-Q3, a large proportion of iPhone buyers

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[279] iPhone 3G Buyer Survey, Apple Market Research & Analysis, FY09-Q1, APLNDC-Y0000026173-256 at '181 [6 1]

[280] iPhone 3G Buyer Survey, Apple Market Research & Analysis, FY09-Q2, APLNDC-Y0000026257-347 at '266 [6 2] *See also* iPhone Buyer Survey, Apple Market Research & Analysis, FY09—Q3, APLNDC-Y0000026348-460 at '352 [6 3] *See also* iPhone Buyer Survey, Apple Market Research & Analysis, FY09-Q4, APLNDC-Y0000026461-573 at '473-478 [6 4]

[281] iPhone 3G Buyer Survey, FY09-Q2, Apple Market Research & Analysis, APLNDC-Y0000026257-347 at '261 [6 2]

[282] iPhone Buyer Survey, FY09—Q3, Apple Market Research & Analysis, APLNDC-Y0000026348-460 at '352 [6 3] *See also* iPhone Buyer Survey, FY10-Q1, Apple Market Research & Analysis, APLNDC-Y0000026574-868 at '578 [6 5] *See also* iPhone Buyer Survey, FY10-Q2, Apple Market Research & Analysis, APLNDC-Y0000026687-807 at '691 [6 6]

[283] iPhone Owner Study, Apple Market Research & Analysis, February 2010, APLNDC-Y0000024334-548 at '339 and '353 [6 7]

purchased the iPhone because they wanted a phone with a combination of features, including music, email, Web, downloaded games and other applications [284] Apple noted that "[t]he most important features in the iPhone purchase decisions are Web capabilities, ease of use and a combination device (phone, iPod, internet, etc)"[285] In FY2010-Q4, FY2011-Q1, and FY2011-Q2 surveys, Apple found that web capabilities, ease of use, and the ability to download and use applications were rated the highest in importance by iPhone buyers in their purchase decisions [286] Similarly, according to surveys fielded during FY2011-Q3, the main reason for purchasing the iPhone in the US was a buyer's desire to have a phone that combines music, email, Web, downloaded games and other applications [287] In a May 2011 iPhone Owner Survey, ability to access email and the web, ease of use, and sound quality of phone calls were listed as the most important iPhone

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[284] iPhone Buyer Survey, APLNDC0001218489-608 at '493, '497-505 [5 36] *See also* iPhone Buyer Survey, Apple Market Research & Analysis, FY10-Q3, APLNDC-Y0000027136-255 at '140, '144-152 [6 8]

[285] iPhone Buyer Survey, APLNDC0001218489-608 at '493 '499-498 [5 36] *See also* iPhone Buyer Survey, Apple Market Research & Analysis, FY10-Q3, APLNDC-Y0000027136-255 at '140 [6 8]

[286] iPhone Buyer Survey, Apple Market Research & Analysis, FY10-Q4, APLNDC-Y0000027256-340 at '261, '266-'272 [3 14] *See also* iPhone Buyer Survey, Apple Market Research & Analysis, FY11-Q2, APLNDC0000036266-348 at '274, '282-286 [7 1] *See also* iPhone Buyer Survey, Apple Market Research & Analysis, FY11-Q1, APLNDC-Y0000027341-422 at '356-'359 [3 15]

[287] iPhone Buyer Survey, Apple Market Research & Analysis, FY11-Q3, APLNDC0000036172-265 at 183 [7 2]

features that influenced consumers' purchase decisions [288] In a November 2011 survey, over one-third of respondents stated that they purchased an iPhone 4S for such specific features as Siri, 8 [63] megapixel camera with improved optics, and dual-core A5 chip [289] The most important features and attributes in purchase decisions also included ease of use, battery life and faster download speeds [290] Overall, "screen quality, ability to access email and the Web, and combining features and functions are the most important attributes in the smartphone purchase decision," according to a January 2011 US Smartphone Market study commissioned by Apple [291]

128 Apple also conducts monthly iPad buyer studies [292] In an August 2010 iPad Buyer Survey, Apple noted that the desire to own an iPad was based on such product features as being portable, lightweight, Wi-Fi capable, and easy to use [293] "Web browsing, email, ebooks, and apps from the App Store

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[288] iPhone Owner Study, May 2011, Apple Market Research & Analysis, May 2011, APLNDC-Y0000025024-147 at '063 [3 16]

[289] iPhone 4S Early Buyer Survey, Apple Market Research & Analysis, November 2011, APLNDC-X0000006506-547 at '511, '531 [7 3]

[290] iPhone 4S Early Buyer Survey, Apple Market Research & Analysis, November 2011, APLNDC-X0000006506-547 at '511, '532 [7 3]

[291] Smartphone Market Study US, Apple Market Research & Analysis, January 2011, APLNDC000143059-154 at '063, '083-'085 [3 17]

[292] iPad Tracking Study, Apple Market Research & Analysis, FY11-Q2, APLNDC0000036349-570 at '351 [7 4]

[293] iPad Buyer Survey, Apple Market Research & Analysis, August 2010, APLNDC-Y0000023361-427 at '384, '386-'387 [3 20]

were the main activities that made owners want an iPad."[294] In July 2010, FY10-Q4, FY11-Q1 iPad Tracking studies, Apple pointed out that "portability, Wi-Fi, and entertainment were key features in prompting [iPad] purchase in the US."[295] In FY2011-Q2 and FY2011-Q3 studies, Apple analyzed purchase decision making and concluded that "[b]rowsing the web, checking personal email, using apps from the App Store, and reading eBooks were the top planned activities that made owners want an iPad."[296] In addition, "the iPad's portability, Wi-Fi capabilities, and entertainment potential continued to have the greatest appeal to owners."[297]

129 Samsung also conducts focus groups and consumer preference studies According to its 2010 Focus Group Interview, "iPhone owners place the most importance on reputation, ability to download application and web browsing capabilities during the

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[294] iPad Buyer Survey, Apple Market Research & Analysis, August 2010, APLNDC-Y0000023361-427 at '388-'389 [3 20]

[295] iPad Tracking Study, July 2010 Report, Apple Market Research & Analysis, September 2010, APLNDC-Y0000023428-578 at '490 [7 5] *See also* iPad Tracking Study, FY10-Q4 Report, Apple Market Research & Analysis, October 2010, APLNDC-Y0000023579-729 at '641 [7 6] *See also* iPad Tracking Study, FY11-Q1 Report, Apple Market Research & Analysis, February 2011, APLNDC-Y0000023730-907 at '816 [7 7]

[296] iPad Tracking Study, FY11—Q2, Apple Market Research & Analysis, May 2011, APLNDC0000036349 570 at '451 [7 4] *See also* iPad Tracking Study, FY11—Q3 Report, Apple Market Research & Analysis, August 2011, APLNDC-Y0000024130-333 at '136 [8 1]

[297] iPad Tracking Study, Apple Market Research & Analysis, FY11 — Q2, APLNDC0000036349-570 at '430 [7 4] *See also* iPad Tracking Study, FY11—Q3 Report, Apple Market Research & Analysis, August 2011, APLNDC-Y0000024130-333 at '136 [8 1]

purchasing process, design and form factor are also important to these consumers " [298] "Android owners place the most importance on phone's uniqueness and cool factor as well as operating system during the purchasing process, design and form are also somewhat important to these consumers.' according to a Focus Group Interview report "[299] As reported in an August 4, 2010 Samsung study entitled "Understanding the iPad Market," iPad owners named portability, iTunes compatibility and screen size of the iPad as main factors that affected their purchase decisions [300]

130 Third party observers also noted a range of reasons for purchasing a smartphone A survey by independent app store GetJar pointed out that embedded content is an increasingly important factor that influences consumers' decisions to buy a smartphone [301] GetJar stated that embedded content is more important in purchase decisions than price, design and touchscreen capability [302]

131 ChangeWave Research surveyed 1,212 consumers who had purchased a smartphone within the six months prior to November 2, 2010 to explain

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[298] Users Mobiles America 2010, April 15, 2010, SAMNDCA00221819-877 at '851 [8 2]

[299] Users Mobiles America 2010, April 15, 2010, SAMNDCA00221819-877 at '851 [8 2]

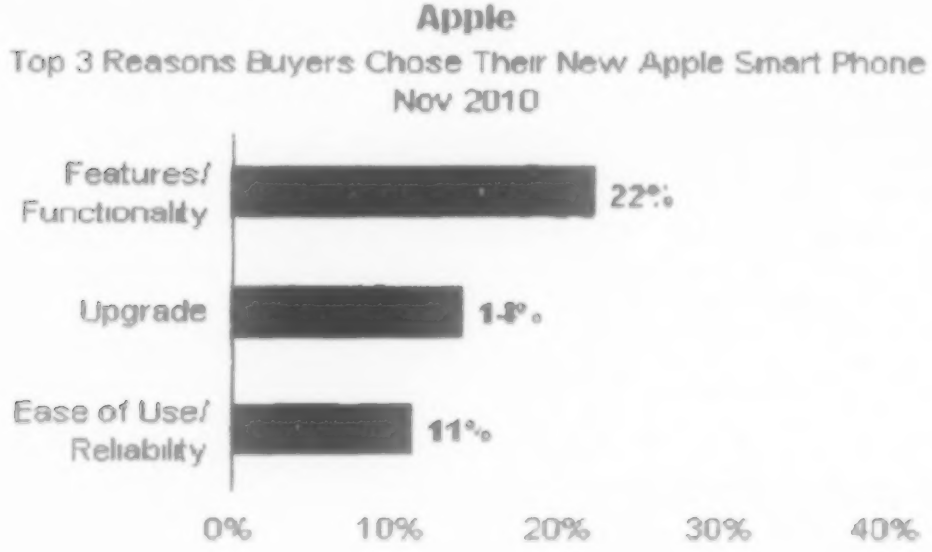
[300] Understanding the iPad Market, Samsung, August 4, 2010, SAMNDCA00234369-405 at '382 [8 3]

[301] Design for Smartphone UX, Samsung Design America (SDA), September 6, 2009, SAMNDCA00204410-494 at '486 [8 4]

[302] Design for Smartphone UX, Samsung Design America (SDA), September 6, 2009, SAMNDCA00204410-494 at '486 [8 4]

why they chose their particular model [303] iPhone owners named Features/Functionality, Upgrade and Ease of Use/Reliability as the top three reasons why they purchased their new Apple smartphone [304] Features/Functionality, Price/Deals and Android OS were ranked as the top three reasons why buyers chose their new Samsung smartphone [305]

Figure 24: Reasons for Choosing a Smartphone[306]

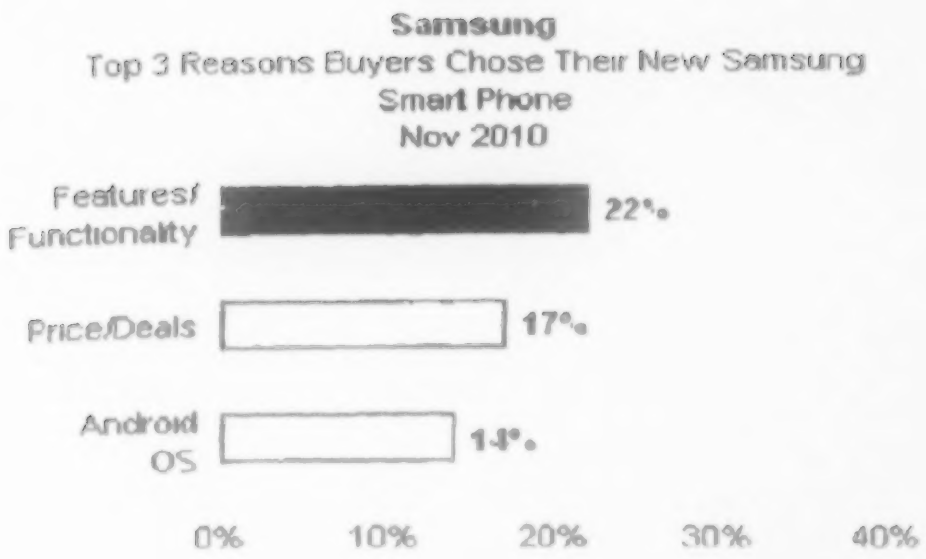


[303] ChangeWave Research Consumer New Smart Phone Owners Survey, November 4, 2010, SAMNDCA00235395-419 at '395, '398 [8 6]

[304] ChangeWave Research Consumer New Smart Phone Owners Survey, November 4, 2010, SAMNDCA00235395-419 at '399 [8 6]

[305] ChangeWave Research Consumer New Smart Phone Owners Survey, November 4, 2010, SAMNDCA00235395-419 at '399 [8 6]

[306] ChangeWave Research Consumer New Smart Phone Owners Survey, November 4, 2010, SAMNDCA00235395-419 at '399 [8 6]



132 In a January 2011 Smartphone Market Study commissioned by Apple, screen quality and size, email and web, combining features/functions, and the OS were named as the most important features and attributes in the smartphone purchase decision [307] An August 2011 "Smartphone Purchase Influencers at Retail" study highlights the importance of screen quality, ease of use, and value for price paid in smartphone purchase decisions [308]

133 According to a CEA Webinar entitled "State of Tablet Market," portability was the key reason for tablet purchase [309] Specifically, size, Android OS, and Flash player capabilities were named as top drivers for

[307] Smartphone Market Study — US, Apple Market Research & Analysis, January 2011, APLNDC0001434059-154 at '083 [3 17]

[308] Smartphone Purchase Influences at Retail, Apple Market Research & Analysis, August 29, 2011, APLNDC0001793637-702 at '657 [13 12]

[309] CEA Webinar "State of Tablet Market," Key Slides & Summary, May 5, 2011, SAMNDCA00237209-223 at '215 [8 7]

purchasing the Galaxy Tab.[310] Resolve Market Research conducted a study on the impact of the iPad on other media and entertainment devices.[311] The results of the study indicated that being "an entertaining and cool device" was the number one reason to own the iPad.[312] A YUDU Media report also noted that "entertainment (56%)," "cool factor (42%)," "convenience (40%)" and "Apple brand (28%)" were the top reasons for wanting the iPad.[313] Participants of a User Performance and Satisfaction study conducted by Strategy Analytics rated "Ease of Use" as the most important feature when considering purchasing a tablet device.[314] "Portability" was the second most important feature, followed by "Display Quality" and "Display Size."[315]

134 I have, however, noticed that in a January 2009 Global Mobile Phone Market study, a touch-screen capability of iPhone was ranked as the second

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[310] Post Launch Consumer Insights Summary, March 2011, SAMNDCA00027737-770 at '768 [8 8]

[311] The Apple iPad Trends and Statistics, YUDU Media, SAMNDCA00184496-514 at '498 [13 10]

[312] The Apple iPad Trends and Statistics, YUDU Media, SAMNDCA00184496-514 at '498 [13 10]

[313] The Apple iPad Trends and Statistics, YUDU Media, SAMNDCA00184496-514 at '499 [13 10]

[314] Tablet Device Evaluation, August 2, 2010, User Experience & Strategic Marketing, Samsung Telecommunications of America, Strategy Analytics, SAMNDCA00250930-988 at '974 [13 11]

[315] Tablet Device Evaluation, August 2, 2010, User Experience & Strategic Marketing, Samsung Telecommunications of America, Strategy Analytics, SAMNDCA00250930-988 at '974 [13 11]

most important factor in iPhone consideration [316] Forty-nine percent of US respondents placed a greater importance on this functionality of iPhone [317] At the same time, 18 percent of respondents did not consider purchasing an iPhone because they did not want a smartphone with a touchscreen [318] The NPD group also pointed out in its February 2011 study that "[a]s more and more devices offer touch screen interface, the appeal of touch screens as an interest driver for tablets seems to have waned over the last year, but the ability to use tablets without a desktop surface and the slim design seems to be gaining importance in attracting consumers to these devices "[319]

135 According to a Q4 2010 ComTech report, only one percent of iPhone owners purchased iPhone because of its design and color [320] In a Q1 2011 ComTech report, two percent of respondents listed design and color as the reason for ownership [321]

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[316] Global Mobile Phone Market Study, Apple Market Research & Analysis, January 2009 (Fielded November 2008), APLNDC0001256422-504 at '487 [8 9]

[317] Global Mobile Phone Market Study, Apple Market Research & Analysis, January 2009 (Fielded November 2008), APLNDC0001256422-504 at '487 [8 9]

[318] Global Mobile Phone Market Study, Apple Market Research & Analysis, January 2009 (Fielded November 2008), APLNDC0001256422-504 at '485 [8 9]

[319] The NPD Group Apple iPad Owner Study II An Updated Look Into Tablet Awareness Ownership and Usage, February 2011, APL-ITC796-0000502479-588 at '500 [9 1]

[320] Deposition of Jared Gosler, February 22, 2012, p 112 [8 10] *See also* ComTech United States Report Q410, Apple Market Research & Analysis, February 11, 2011, APLNDC00010809-809 54 at '809 23 [8 11]

[321] Deposition of Gregory Joswiak, Volume II, February 24, 2012, p 422 [9 3] *See also* ComTech United States - Report Q111,

Similarly, in an Android Market Overview study commissioned by Apple, only one percent of respondents chose the iPhone for the reason of design and color.[322]

136 It is also my understanding that the smartphone choice is frequently defined by the service provider [323] A January 2011 Smartphone market study suggests that smartphone buyers are likely to limit their smartphone choices to their current service provider [324] Mr. Joswiak also agreed that it is a general rule that "consumers are more likely to stick with their carrier provider than they are to switch "[325]

(b) Smartphone and Tablet Desired Features

137 "Today's smartphone buyers are more ma instream adopters of technology" that "have simple needs," according to an Apple internal survey [326]

Apple Market Research & Analysis, May 6, 2011, APLNDC0002831037-088 at '058 [4 10]

[322] Deposition of Gregory Joswiak, Volume II, February 24, 2012, pp 419-420 [9 3] *See also* Android Market Overview, Apple Market Research & Analysis, CY10-Q4, APLNDC00004618-736 at '646 [11 23]

[323] Deposition of Gregory Joswiak, Volume II, February 24, 2012, p 386 [9 3]

[324] Deposition of Gregory Joswiak, Volume II, February 24, 2012, p 384 [9 3] *See also* Smartphone Market Study US, Apple Market Research & Analysis, January 2011, APLNDC0001434059-154 at '083 [3 17]

[325] Deposition of Gregory Joswiak, Volume II, February 24, 2012, pp 384-385, 440 [9 3] *See also* Deposition of Gregory Joswiak, Volume I, February 23, 2012, p 60 [9 2]

[326] Point-of-Sale Influence on Smartphone Buyers, July 2011, Apple Market Research & Analysis, July 2011, APLNDC-Y0000025232-304 at '240, '242 [9 5]

Apple finds that fast internet access is a "key need" of smartphone buyers, while other needs include a "good" camera, email, some basic Apps, speed and attractive design [327] In a January 2009 Global Mobile Phone Market Study commissioned by Apple, camera, email and calendar were named as three top capabilities wanted by US smartphone buyers on their next phone.[328] A Consumer Inside Framework study conducted between June and July 2010 points out that consumers desire a mobile device with reliable performance (such as memory, processor and battery) and network service, multitasking, most up to date technology (3D, video, photo), and compatibility across devices and services.[329]

138 Business users rated Ease of Operation as the most important feature of the smartphone, according to J D Power and Associates [330] Other smartphone features that are important to users include Operating System, Physical Design, Handset Features and Battery Life [331] In particular, customers

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[327] Deposition of Gregory Joswiak, Volume II, February 24, 2012, p 366 [9 3] *See also* Point-of-Sale Influence on Smartphone Buyers, July 2011, Apple Market Research & Analysis, July 2011, APLNDC-Y0000025232-304 at '243 [9 5]

[328] Global Mobile Phone Market Study - 12 Country Omnibus Study, Apple Market Research & Analysis, January 2009, APLNDC0001256422-504 at '480 [8 9]

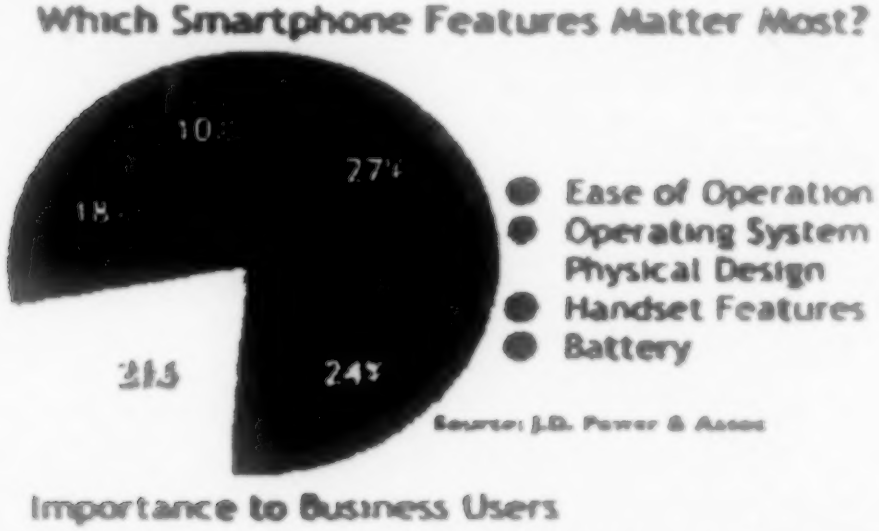
[329] CIF US Results Report Final, July 23, 2010, Iconmobile Group, SAMNDCA00225505-611 at '507, '531, '549, '561, 576 [9 6]

[330] 2009 Mobile UX Forecast M T O C , Samsung Electronics Co , LTD, November 10, 2008, SAMNDCA00214969-5201 at '5083 [8 5]

[331] 2009 Mobile UX Forecast M T O C , Samsung Electronics Co , LTD, November 10, 2008, SAMNDCA00214969-5201 at '5183 [8 5]

are more reluctant to let the battery on their phone run out than they would be on other devices, since this would leave them with no form of communication [332]

Figure 25: Smartphone Features Important to Business Uses[333]



139 Similarly, a 2010 comScore study found that Ease of Use and Length of Battery Life are most wanted smartphone features [334] New smartphone owners [335] also ranked Applications, Ease of Use and

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[332] Top Trends for the Next Year and Beyond, System Concepts, 2009 Mobile UX Forecast SAMNDCA00214739-745 at '741 [9 4]

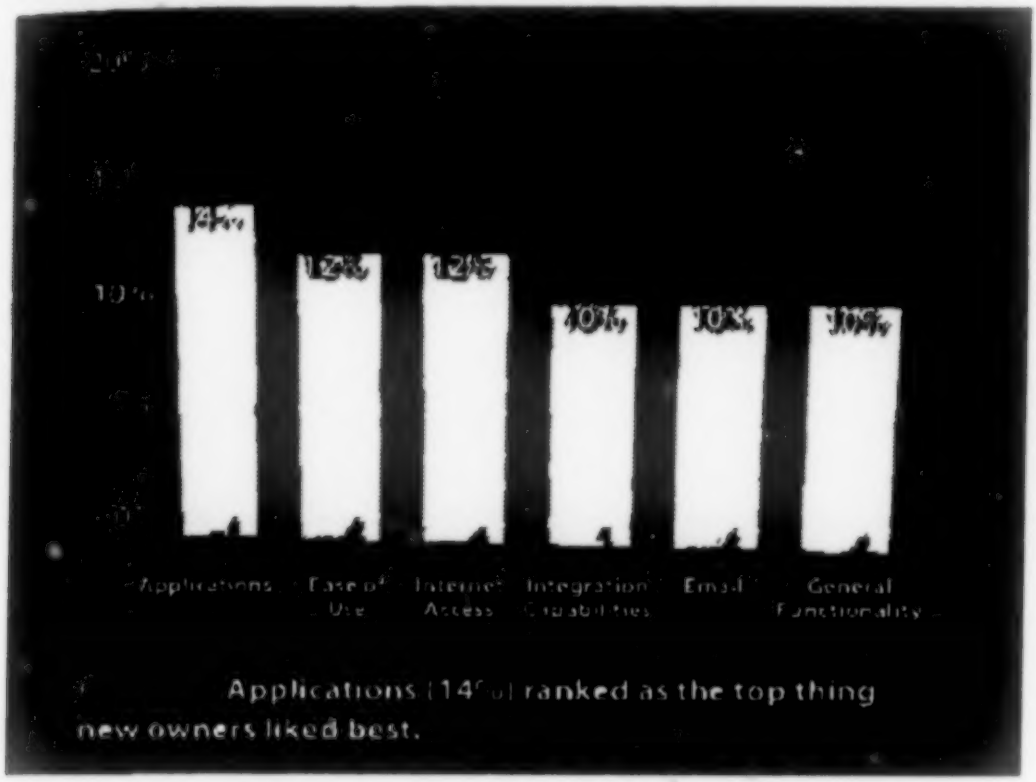
[333] 2009 Mobile UX Forecast M T O C , Samsung Electronics Co , LTD, November 10, 2008, SAMNDCA00214969-5201 at '5183 [8 5]

[334] comScore Using Consumer Insights to Cover Opportunities in Next Generation Mobile Devices, Donovan Mark, CES 2010, SAMNDCA00230720-761 at '756 [9 7]

[335] New smartphone owners are defined as customers that purchased a smartphone within 6 months prior to May 2010, Samsung Lovemark Mobile & Web Research, June 23, 2010, SAMNDCA00207695-765 at 732 [9 8]

Internet Access as the most loved features of a smartphone [336]

Figure 2 6: Most Loved Smartphone Features, May 2010[337]



140 In November 2010, ChangeWave Research queried smartphone buyers on the specific feature they liked best about their smartphones [338] Ease of

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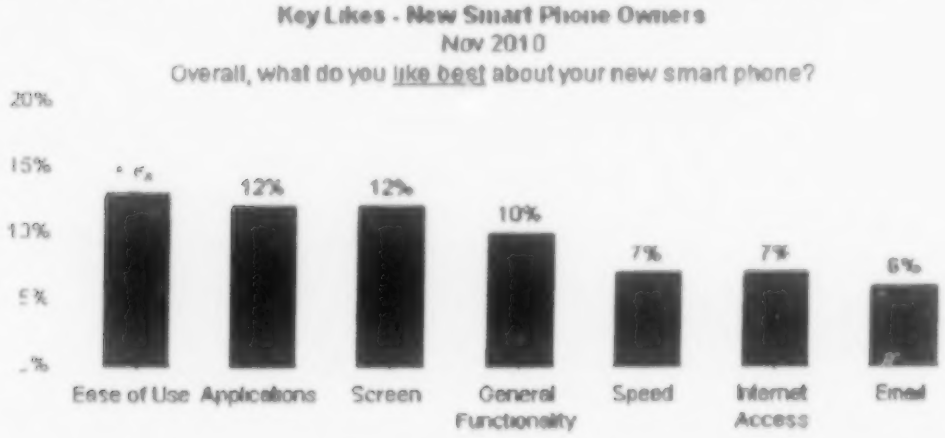
[336] New smartphone owners are defined as customers that purchased a smartphone within 6 months prior to May 2010 Samsung Lovemark Mobile & Web Research, June 23, 2010, SAMNDCA00207695-765 at '736 [9 8]

[337] New smartphone owners are defined as customers that purchased a smartphone within 6 months prior to May 2010, Samsung Lovemark Mobile & Web Research, June 23, 2010, SAMNDCA00207695-765 at '736 [9 8]

[338] ChangeWave Research Consumer New Smart Phone Owners Survey, November 4, 2010, SAMNDCA00235395-419 at '397 [8 6]

Use was the top thing new owners liked most about their smartphones, followed by Applications and Screen [339]

Figure 27: Best Feature of a Smartphone[340]



141 Consumers increasingly value handsets that can perform more complicated processes [341] According to ABI Research, a mobile handset has become an extension of the user's home computer [342] For example, the App store can be accessed from iTunes from a Mac/PC, an iPod and an iPhone According to System Concepts, iTunes has played a key role in the

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[339] ChangeWave Research Consumer New Smart Phone Owners Survey, November 4, 2010, SAMNDCA00235395-419 at '397 [8 6]

[340] ChangeWave Research Consumer New Smart Phone Owners Survey, November 4, 2010, SAMNDCA00235395-419 at '397 [8 6]

[341] 2009 Mobile LIX Forecast M T O C , Samsung Electronics Co , LTD, November 10, 2008, SAMNDCA00214969-5201 at '5063 [8 5]

[342] 2009 Mobile LIX Forecast M T O C , Samsung Electronics Co , LTD, November 10, 2008, SAMNDCA00214969-5201 at '5063 [8 5]

success of the iPhone [343] According to the study, iTunes has made the iPhone familiar and easy to use [344] According to a Smartphone Market Opportunity Study conducted by Ipsos Marketing, larger screen, multitasking, and portability are named as the most preferred features of a smartphone [345]

142 Smartphone users also utilize faster speeds to use more services, such as video calls, web, streaming, VoIP, etc [346] System Concepts predicts that 4G services may become standard within the next few years [347] Smartphone customers also expect Wi-Fi as a standard capability of a smartphone [348]

143 According to a 2010 Focus Group Interview conducted by Samsung, smartphone users consider Web Browsers to be critical features because they provide a sense of security and instantaneous access to the world [349] The GPS feature is extremely

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[343] Top Trends for the Next Year and Beyond, System Concepts, 2009 Mobile LIX Forecast, SAMNDCA00214739-745 at '742 [9 4]

[344] Top Trends for the Next Year and Beyond, System Concepts, 2009 Mobile LIX Forecast, SAMNDCA00214739-745 at '742 [9 4]

[345] Smartphone Market Opportunity Study Final Report, April 2011, Prepared for Samsung Electronics, SAMNDCA00226589-816 at '697 [9 9]

[346] Top Trends for the Next Year and Beyond, System Concepts, 2009 Mobile LIX Forecast, SAMNDCA00214739-745 at '745 [9 4]

[347] Top Trends for the Next Year and Beyond, System Concepts, 2009 Mobile UX Forecast, SAMNDCA00214739-745 at '745 [9 4]

[348] Top Trends for the Next Year and Beyond, System Concepts, 2009 Mobile UX Forecast, SAMNDCA00214739-745 at '745 [9 4]

[349] Users Mobiles America 2010, April 15, 2010, SAMNDCA00221819-877 at 827-828, '840 [8 2]

important to smartphone users in the car [350] Taking Pictures is considered to be of high importance to users who like to take pictures on the go and send them to their family and friends instantaneously [351]

144 A study by Kelsey Group also shows an increase in mobile search activities such as downloading or looking at maps/directions, searching the internet for products and services, finding information about movies and other entertainment, and connecting to a social network (Facebook/ MySpace) in the past years [352] Similarly, according to IBM research, an increasing number of users are researching products they plan to purchase through the mobile web [353]

145 A 2011 Wireless Smartphone Satisfaction Study conducted by J D Power and Associates finds that the top smartphone features desired on owners' future device include memory expansion, push-to-talk capability, touch screens and voice recognition [354] According to the study, Apple smartphone users are most interested in further developing their handset's

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[350] Users Mobiles America 2010, April 15, 2010, SAMNDCA00221819-877 at '840 [8 2]

[351] Users Mobiles America 2010, April 15, 2010, SAMNDCA00221819-877 at '840 [8 2]

[352] 2009 Mobile UX Forecast M T O C , Samsung Electronics Co , LTD, November 10, 2008 SAMNDCA00214969-5201 at '5060 [8 5]

[353] 2009 Mobile UX Forecast M T O C , Samsung Electronics Co , LTD, November 10, 2008, SAMNDCA00214969-5201 at '5068 [8 5]

[354] 2011 Wireless Smartphone Satisfaction Study, Management Report, J D Power and Associates, March, 2011, SAMNDCA10246338-445 at '360 and 366 [13 9]

ability to capture and record video and have memory expansion options [355]

146 When asked about their top-three favorite features, iPad owners pointed to portability, Wi-Fi connectivity and the ability to surf the web, as found in a February 2011 NPD Group survey [356] iPad owners who purchased the device for themselves appear more enthusiastic about Wi-Fi connectivity, ability to surf the web, 3G connectivity and the ability to watch movies Those who received their device as a gift are more likely to rate portability, overall size, ability to read eBooks and the ability to play music [357]

* * *

5. Mr. Musika's calculation of Samsung's profits related to the infringement is overstated.

226 For Apple's design-related intellectual property, I understand that Apple may be entitled to Samsung's profits related to the infringement Mr Musika calculates Samsung's profits two ways—the first deducting no expenses and the second based on Samsung's gross margin

227 As I describe below, Samsung is entitled to deduct all of its operating expenses in its calculation

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[355] 2011 Wireless Smartphone Satisfaction Study, Management Report, J D Power and Associates, March, 2011, SAMNDCA10246338-445 at '360 and '367 [13 9]

[356] The NPD Group Apple iPad Owner Study II An Updated Look Into Tablet Awareness Ownership and Usage, February 2011, APL-ITC796-0000502479-588 at '489 and '518 [9 1]

[357] The NPD Group Apple iPad Owner Study II An Updated Look Into Tablet Awareness Ownership and Usage, February 2011, APL-ITC796-0000502479-588 at '547 [9 1]

of the profits related to the infringement of Apple's design-related IP Further, the majority of these profits are appropriately apportioned to the other elements of value that Samsung contributes to the sales of the accused products

* * *

a) SEC's Deductible Expenses

318 Samsung's financial data includes a section titled "Manufacturing" that includes sales data and expense data for SEC and two Chinese manufacturing subsidiaries [660] This data includes the accused products that are manufactured to be sold worldwide,[661] therefore, for many accused products the manufacturing quantity is significantly higher than the sales of SEA and SEC.

319 As discussed by SEC's 30(b)(6) witness on its financial data, Mr Sim, in its latest financial data productions, Samsung has adjusted the COGS reported in the data in order to "zero out" the manufacturing profits of the Chinese manufacturing subsidiaries [662] Mr Musika has performed adjustments to his calculations in order to reverse the effect of these adjustments [663]

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[660] The Manufacturing section includes data for SEC Korea, SEHZ, and TSTC, the latter two of which are the Chinese manufacturing subsidiaries (Deposition of Jaehwang Sim, March 10, 2012, p 114 [4 5])

[661] Deposition of Jaehwang Sim, March 10, 2012, pp 112-113 [4 5]

[662] Deposition of Jaehwang Sim, March 31, 2012, pp 242, 261 [13 4] *See also* Deposition of Timothy Sheppard, March 30, 2012, pp 147-148 [13 3]

[663] Musika Report, pp 49-50 [2 2]

320 In my calculations, I rely on SEC's COGS that do not include any adjustment for the Chinese manufacturing subsidiaries Samsung's early productions of financial data did not include any adjustment for the Chinese manufacturing subsidiaries,"[664] therefore, I rely on the COGS reported in Samsung s earlier financial spreadsheets for the purposes of calculating SEC's deductible expense [665]

321 To determine whether SEC's reported expenses are deductible, I have reviewed several deposition transcripts of Samsung financial witnesses and had a conversation with Mr Dongyul Choi, a Manager in SEC's Finance Team, to gain a better understanding of the costs included in the different expense categories

322 The largest cost category for SEC is the cost of goods sold for the accused products Based on my conversation with Mr Choi, I understand that the COGS expense includes direct expenses, such as direct labor and royalties, and indirect expenses, such as indirect manufacturing labor cost, manufacturing overhead, and utility costs These costs are necessary for the manufacture of the accused products and are therefore deductible expenses I note that it appears Mr Musika does not contest that COGS will be found to be deductible expenses, as he has performed an Unjust Enrichment calculation taking these COGS into account [666]

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[664] Deposition of Jaehwang Sim, March 10, 2012, pp 35-37, 43-48 [4 5]

[665] Exhibit 1922 to the Deposition of Timothy Sheppard, March 30, 2012, SAMNDCA00354292-385 [15 14]

[666] Musika Report, pp 24-25 [2 2]

323 As part of its calculation of the operating expenses (and COGS to a lesser degree), Samsung allocates expenses that are not directly related to a specific product Samsung's financial witnesses have described that Samsung's allocation methodology follows a three-step allocation process Timothy Sheppard, STA's Vice President of Finance and Operations, describes the three-step process as follows [667]

> First, any expenses that are incurred specifically with respect to a particular model are allocated to that model,
>
> Second, costs that are not specific to a given model are allocated to various cost centers. So, for example, the lease of a building will be allocated to various cost centers. If that allocation can be undertaken on the basis of usage, that method will be used For example, if the sales team that works with Sprint takes up two thousand square feet of a four thousand square foot building, half of the rent will be allocated to that Sprint sales team Alternatively, if the usage methodology is not practical, the revenue method will be used
>
> The third and final step is to then take common cost centers, for example, the H R

[667] Declaration of Timothy Sheppard in Support of Samsung's Opposition to Apple's Motion for Rule 37(b)(2) Sanctions for Samsung's Alleged Violations of January 27, 2012 Damages Discovery Order, March 12, 2012, (hereafter, "Sheppard Declaration") p 8 [4 17] *See also* Deposition of Timothy Sheppard, February 29, 2012, pp 60-64, 92-97, 99 [10 13] *See also* Deposition of Jaehwang Sim, March 10, 2012, pp 120-121, 134-137 [4 5]

department or the accounting group and allocate those costs across devices

324 This allocation procedure is used in Samsung's ordinary course of business, [668] and is instituted as part of Samsung's monthly closing process [669] This type of allocation methodology is a reasonable method to allocate indirect expenses I note that Apple's 30(b)(6) witness on financial topics testified that Apple itself allocates the majority of its operating expenses by revenue [670]

325 Based on my conversation with Mr Choi,[671] I understand that the different operating expense categories include

- GA Expense—Labor Cost: General & Administrative Staff labor cost
- GA Expense—Depreciation G&A Staff office supplies and depreciation cost
- GA Expense—Others IT support cost, 3rd party service expense cost
- Sales Expense—Marketing Advertising, promotion, and sales commissions

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[668] Sheppard Declaration, p 8 [4 17]

[669] Deposition of Timothy Sheppard, February 29, 2012, pp 65-67, 96-97 [10 13] Deposition of Timothy Sheppard, March 30, 2012, pp 77-78 [13 3]

[670] Deposition of Mark Buckley, February 23, 2012, p 104 [5 2]

[671] Conversation with Dongyul Choi, April 15, 2012

- Sales Expense—Paid Commission Sales expenses related to 3rd party subcontractors[672]
- Sales Expense—Insurance all Insurance Cost
- Sales Expense—Others Sales personnel labor cost, transportation cost, service costs
- R&D Expense—Labor Cost R&D related labor cost[673]
- R&D Expense—Depreciation R&D related equipment depreciation
- R&D Expense—Others R&D material cost, 3rd party R&D costs [674]

326 Based on my discussions, these costs are necessary for the manufacture and sale of the accused products and are therefore deductible expenses

327 One expense that I requested more information about is whether any litigation expense related to the current lawsuit is included in the expense data I received financial data that breaks out the all litigation expense that has been allocated to each accused product on a worldwide basis,[675] the allocated lawsuit expense is a component of COGS, therefore I deduct the litigation expenses from the

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[672] Deposition of Jaehwang Sim, March 31, 2012, p 251 [13 4] *See also* Deposition of Jaehwang Sim, March 10, 2012, pp 127-129 [4 5]

[673] Deposition of Jaehwang Sim, March 10, 2012, p 138 [4 5]

[674] Deposition of Jaehwang Sim, March 10, 2012, p 138 [4 5]

[675] Volume 9, Tab 26

worldwide COGS in my calculations and thereby increase my calculation of profits

328 In summary, I have determined that all of the expenses in the Manufacturing section of the financial data are deductible expenses except the litigation expense that has been allocated to the accused products

b) STA's and SEA's Deductible Expenses

329 The expense categories included in the financial data are identical between SEA and STA, and Timothy Sheppard verified that the expenses are reported in a similar fashion,[676] so I analyze the deductible expenses of STA and SEA together In my discussion below, I will refer to STA, but the SEA treatment is identical [677]

330 Similar to SEC, STA's largest expense is COGS I understand that the large majority of COGS is the transfer price from SEC to STA, but other expenses such as repair, inventory value adjustments, scrap, and physical inventory adjustments are also included in STA's COGS [678] Mr Sim testified that "When it comes to COGS under STA, it includes purchase cost, purchase price for the products obtained from a manufacturer And there is also costs related to importing products, additional costs So you

[676] Conversation with Timothy Sheppard, April 13, 2012

[677] Conversation with Timothy Sheppard, April 13, 2012 *See also* Deposition of Jaehwang Sim, March 31, 2012, p 239 [13 4]

[678] Conversation with Timothy Sheppard, April 13, 2012

can consider this figure in COGS hundred percent direct cost "[679]

331 Because STA's COGS are directly related to the sale of the accused products, STA's COGS are a deductible expense for the purpose of calculating STA's profit However, when calculating the consolidated profitability of SEC, STA, and SEA, the transfer price between SEC and STA is not a deductible expense because it is a cost to STA and revenue to SEC Therefore, I do not treat the transfer price as a deductible expense when calculating the profitability including SEC I do not make any deduction for the cost categories other than the transfer price in COGS and remove the effect of the STA's and SEA's COGS for the calculation of the consolidated profitability of SEC, STA, and SEA

332 Based on the discussion in Mr Musika's report, I understand that Apple may contest that 100% of the transfer price is a deductible expense when calculating the profitability of SEA and STA [680] As Samsung's financial witnesses have explained, the transfer price is set based on an agreement between Samsung and the U.S government [681] Mr Sheppard

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[679] Deposition of Jaehwang Sim, March 31, 2012, p 227 [13 4]

[681] Deposition of Timothy Sheppard, January 24, 2012, pp 21-22, 35, 62-63, 82-83, 115-116 [3 22] *See also* Advance Pricing Agreement between Samsung Electronics American, Inc and The Internal Revenue Service, S-ITC-007274461 — 476 [4 18] *See*

testified that "the negotiation for the APA is really a three-party negotiation between the Korean IRS, the U S IRS, and Samsung to say based on our economic activity, they hire economists, we hire economists, the Korean government hires economists and says based on the activity STA does, this is a fair and reasonable amount of profit that reflects the activity that STA is doing Based on that, that's how the tax is paid "[682] I do not see any reason why an adjustment would need to be made to the transfer price

333 Based on my conversation with Tim Sheppard, [683] I understand that the different operating expense categories include [684]

- GA Expense—Labor Cost General & Administrative Staff labor cost (salaries, overtime, bonuses, benefits, etc)
- GA Expense—Depreciation All depreciation for fixed assets (computers, office equipment, etc)
- GA Expense—Others Travel expenses, telephone expenses, building expenses for accounting, IT, HR, facilities, legal, and management,

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also Deposition of Timothy Sheppard, February 29, 2012, pp 123-129 [10 13]

[682] Deposition of Timothy Sheppard, February 29, 2012, pp 125-126 [10 13]

[683] Conversation with Timothy Sheppard, April 16, 2012

[684] The financial data includes a Sales Expenses—Marketing line, but the expenses are zero because SEC reimburses STA for marketing expense (Deposition of Jaehwang Sim, March 31, 2012, pp 251-252 [13 4] *See also* Deposition of Timothy Sheppard, March 30, 2012, p 98 [13 3])

- Sales Expense—Logistics Cost Warehousing and freight (moving products)
- Sales Expense—Paid Commission Primarily Temporary staff
- Sales Expense—Insurance Property and general liability insurance
- Sales Expense—Others Travel expenses, telephone expenses, building expenses for sales cost centers
- Operating Expenses—Other small miscellaneous items

334 Based on my discussions, these costs are necessary for the manufacture and sale of the accused products and are therefore deductible expenses Mr Sheppard testified that STA is "primarily a sales organization "[685]

335 In summary, I have determined that all of the expenses in the STA and SEA sections of the financial data are deductible expenses

3. Calculation of Samsung's Profits on the Accused Products

336 I understand that several damages periods may be relevant depending on which design-related intellectual property is found to be valid and infringed, so I have calculated profits for the entire period of sales of accused products, from the filing of the Complaint on April 15th, 2011,[686] and from the filing

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[685] Deposition of Timothy Sheppard, January 24, 2012, p 24 [3 22]

[686] Apple Inc 's Complaint for Patent Infringement, April 15, 2011 [15 32]

of the Amended Complaint on June 16, 2011.[687] In addition, I understand that the Court may determine that the damages period may be cut-off for certain periods, so I have included monthly calculations of profitsfor each accused product in Schedules 21.1—21.28 at Volume 1, Tab 2 of my report.

337 In addition to the three different damages periods for which I calculate profits, I also calculate profits for (i) STA and SEA only, and (ii) SEC, STA, and SEA.

338 In preparing to calculate Samsung's profits on the accused products, I first calculate period totals across all products for the 2010, 2011, the period April 15, 2011 to December 31, 2011, and the period June 16, 2011 to December 31, 2011. I then aggregate STA and SEA financials by product, report them on a per unit basis, and calculate Manufacturing expenses on a per unit basis. I then apply the per unit manufacturing expenses and SEA/STA per unit expenses to determine the per unit profitability, and finally multiply by the number of units sold to determine the profit for each accused product. The calculations of profitability are in the 4 Series of Schedules at Volume 1, Tab 2 of my report.

339 My calculations of profits on the accused products after deductible expenses are as follows:

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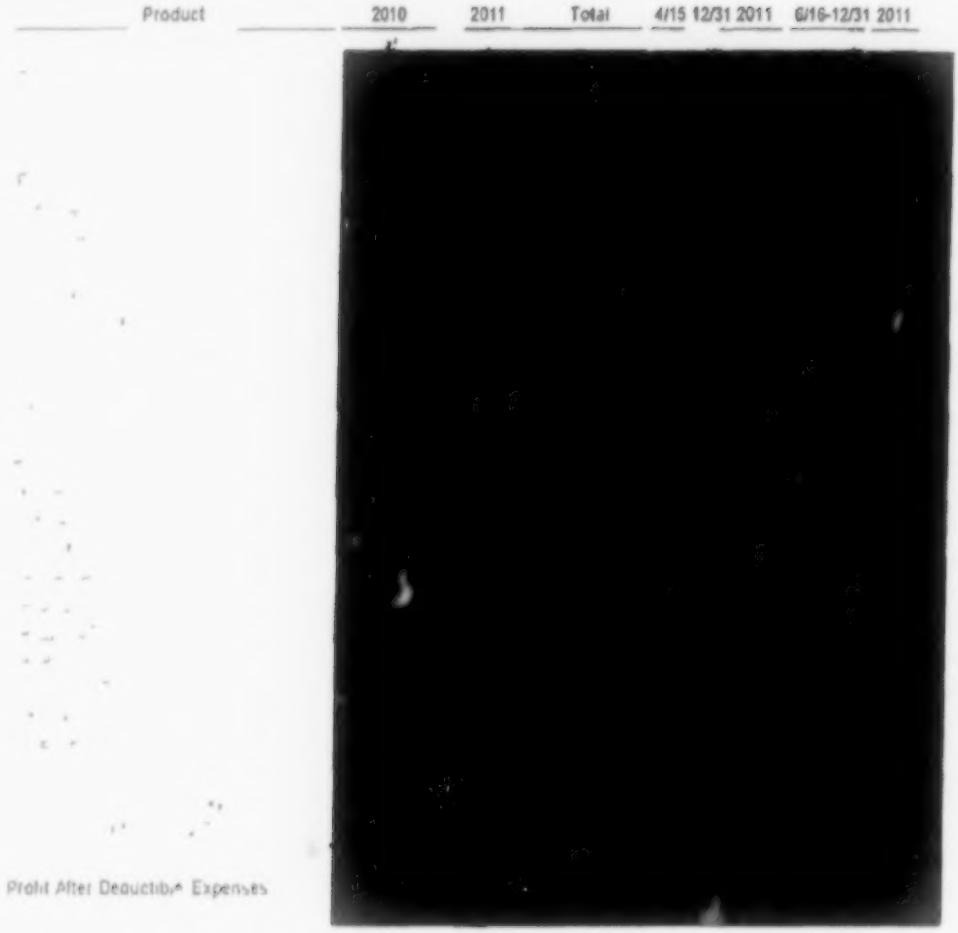
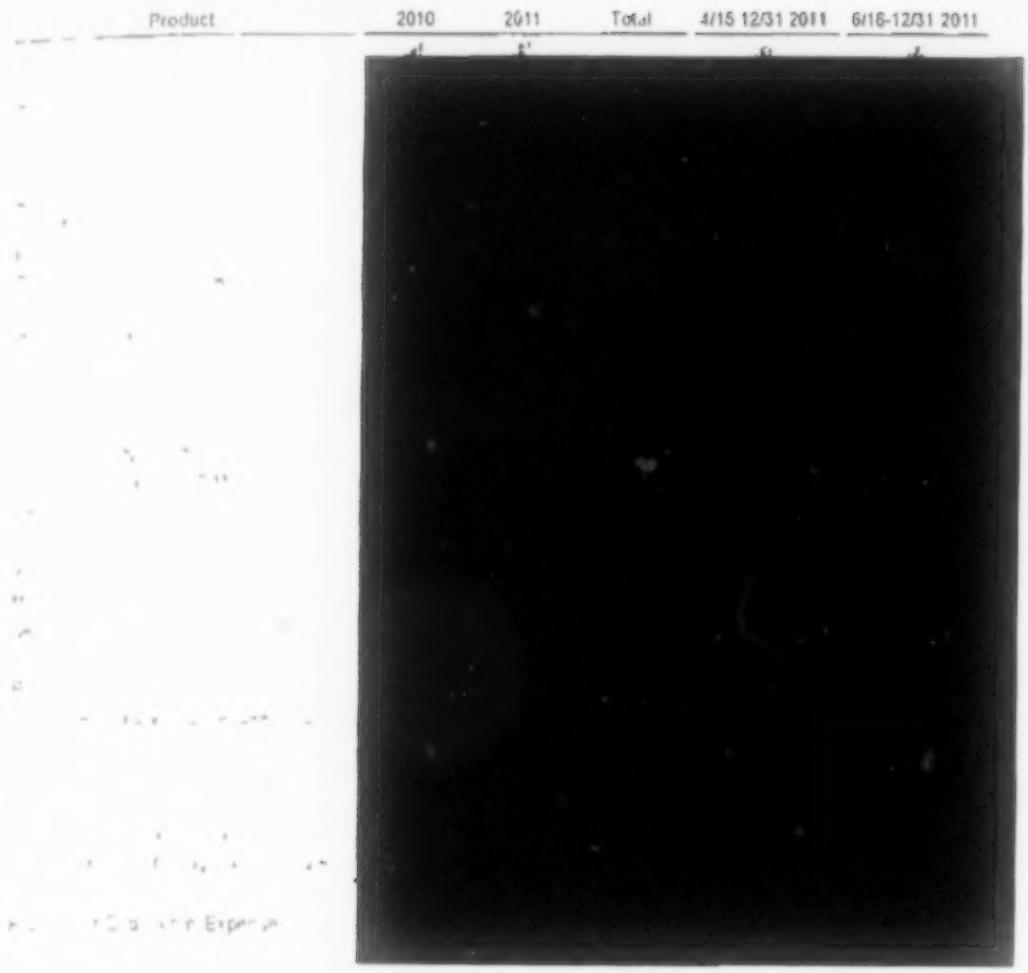
[687] Apple Inc.'s Amended Complaint, June 16, 2011 [2.1].

Figure 43: STA and SEA Profit After Deductible Expenses[688]



[688] Schedule 4.2 [1.2]

Figure 44: SEC, STA, and SEA Profit After Deductible Expenses[689]



4. Apportionment of Profit to the Design-Related IP at Issue

340 Determining the profits of the accused products is the first step of the Unjust Enrichment calculation Next, the profits should be apportioned to the design-related IP at issue versus everything else that is contributed by Samsung I understand that Apple is likely to take the position that Samsung is not entitled to apportion its profits for the asserted design

[689] Schedule 4 2 [1 2]

patents, this is a legal issue for which I do not have an opinion I calculate an apportionment for each design-related IP group, and leave it to the Court to determine whether I can apply the apportionment for the design patents

341 As I have discussed at length in this report, the design-related IP at issue in this lawsuit is a small portion of the total design relevant for the accused products In addition, design as a whole is a small portion of the value to consumers of smartphones. Therefore, a proper apportionment is critical to avoid providing a windfall to Apple of the entirety of Samsung's profits

342 Even Apple itself highlighted the value of other smartphone features, rather than industrial design, during its licensing discussions with Samsung During the October 5, 2010 meeting with Samsung, Apple presented a potential licensing framework [690] According to the presentation, an advanced mobile device would need to license three sets of technology. basic telephony, Apple computing technologies, and advanced iPhone technologies [691] Specifically, this framework was based on Apple's conclusion that "***Software*** creates the largest share of product value " [692] (emphasis in original) Apple further explained that "[o]perating system, applications, user interface, and services are the key to a ***differentiated customer***

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[690] Deposition of Richard J Lutton, Jr , July 26, 2011, p 181 [14 7]

[691] Exhibit 11 to Lutton Deposition, Samsung-Apple Licensing Discussion, October 5, 2010, APLNDC00010886-903 at '893 [14 8]

[692] Exhibit 11 to Lutton Deposition, Samsung-Apple Licensing Discussion, October 5, 2010, APLNDC00010886-903 at '889 [14 8]

experience "[693] (emphasis in original) In fact, "[s]oftware [had] always been at the heart of Apple's business and intellectual property portfolio "[694]

343 The evolution of Apple's devices saw both an increase in processing power and miniaturization, resulting in the iPhone and iPad line of products, which Apple characterized as "RF Mobile Computer[s] " [695] Such "Mobile Computers rely upon several key technologies principally developed in the computing industry " [696] The slide below, presented by Apple during the October meeting, specifically highlighted several of these "key technologies "[697]

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[693] Exhibit 11 to Lutton Deposition, Samsung-Apple Licensing Discussion, October 5, 2010, APLNDC00010886-903 at '889 [14 8]

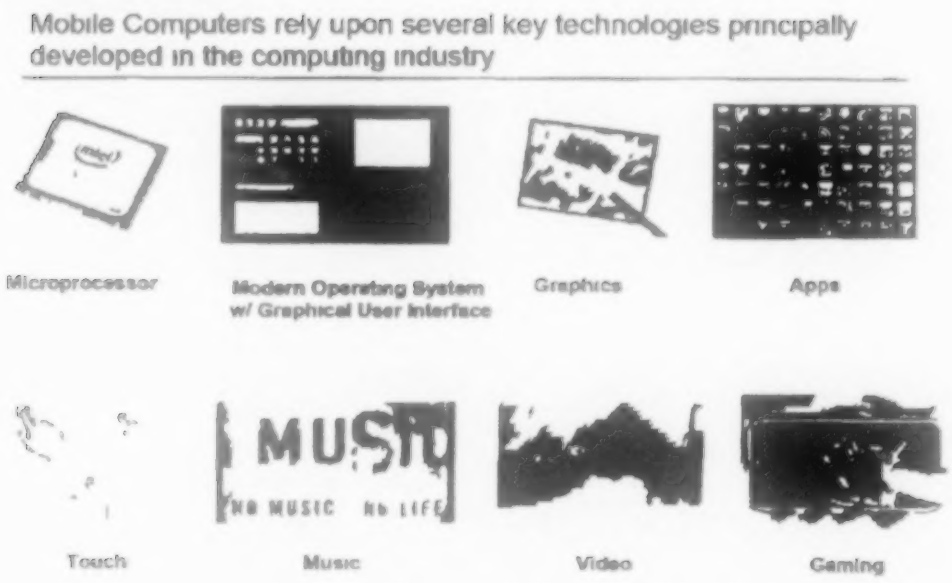
[694] Exhibit 11 to Lutton Deposition, Samsung-Apple Licensing Discussion, October 5, 2010, APLNDC00010886-903 at '889 [14 8]

[695] Exhibit 11 to Lutton Deposition, Samsung-Apple Licensing Discussion, October 5, 2010, APLNDC00010886-903 at '890 [14 8]

[696] Exhibit 11 to Lutton Deposition, Samsung-Apple Licensing Discussion, October 5, 2010, APLNDC00010886-903 at '891 [14 8]

[697] Exhibit 11 to Lutton Deposition, Samsung-Apple Licensing Discussion, October 5, 2010, APLNDC00010886-903 at '891 [14 8]

Figure 45: Key Technologies for Mobile Computing



344 These "[m]obile computers create more value for customers—and sell for more—by virtue of the additional technologies that enable them " [698] By contrast, save for one sole slide,[699] Apple's presentation is devoid of any mention of the value of industrial design as a value driver for smartphones Notably, as discussed elsewhere in my report, the slide that does mention Apple's industrial design suggests that Apple was willing to license its design features to Samsung

345 The discovery record includes several consumer studies that can be used to determine a maximum apportionment for design as a whole

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[698] Exhibit 11 to Lutton Deposition, Samsung-Apple Licensing Discussion, October 5, 2010, APLNDC00010886-903 at '892 [14 8]

[699] Exhibit 11 to Lutton Deposition, Samsung-Apple Licensing Discussion, October 5, 2010, APLNDC00010886-903 at '898 [14 8]

a) Apportionment to "Design"

346 In this section, I analyze the importance of design to smartphone buyers and owners in comparison to other smartphone's features and attributes To perform this analysis, I [144] use data from (i) iPhone Buyer Surveys commissioned by Apple, (ii) ComTech Reports also commissioned by Apple, and (iii) J D Power and Associates Consumer Studies

(1) Apple iPhone Buyer Surveys

347 In this section, I analyze the importance of the iPhone's attractive appearance and design to iPhone buyers in comparison to other features and attributes of the iPhone I use data from the iPhone Buyer Surveys commissioned by Apple

348 According to Apple's summary, Apple Market Research has conducted monthly surveys of iPhone buyers to study the demographics of iPhone purchasers, their purchase decision making, initial use and satisfaction with the iPhone [700] As a part of the survey, the respondents were presented with a list of iPhone's features or attributes and asked to rank the importance (e g "very important," "somewhat important," "neither important nor unimportant," "somewhat unimportant," "very unimportant," and "don't know") of the iPhone's features in their iPhone purchase decisions [701] The list of the iPhone's features or attributes presented to the respondents included such features as "Web capabilities," "Ease of use," "The ability to download and use apps," "Multitasking," and

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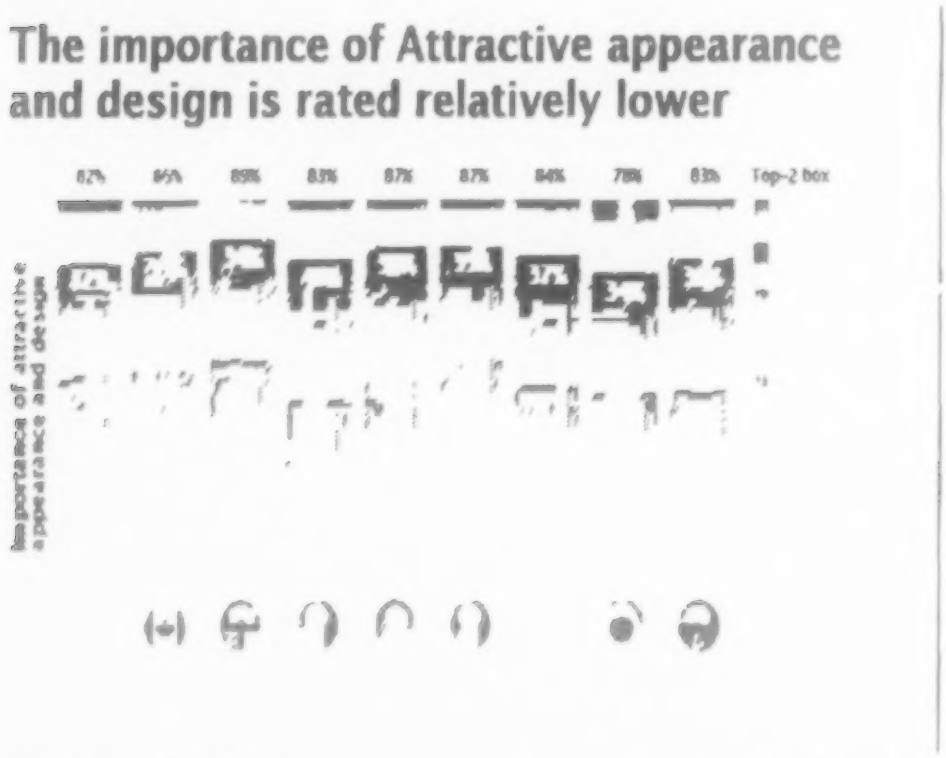
[700] iPhone Buyer Survey, Apple Market Research & Analysis, FY10 - Q2, APLNDC-Y0000026687-807 at '689 [6 6]

[701] iPhone Buyer Survey, Apple Market Research & Analysis, FY10 - Q4, APLNDC-Y0000027256-340 at '267-'285 [3 14]

"Attractive Appearance and Design" among others [702] The results of the survey were shown as a series of bar graphs for each iPhone's feature or attribute, similar to Figure 46 below [703]

Figure 46: The Importance of Attractive Appearance and Design in iPhone Purchase Decision[704]



349 Apple frequently analyzes the top box ("Very Important") and top-2 boxes ("Very Important" and

[702] iPhone Buyer Survey, Apple Market Research & Analysis, FY10 - Q4, APLNDC-Y0000027256-340 at '267-'285 [3 14]

[703] iPhone Buyer Survey, Apple Market Research & Analysis, FY10 - Q4, APLNDC-Y0000027256-340 at '267-'285 [3 14]

[704] iPhone Buyer Survey, Apple Market Research & Analysis, FY10 - Q4, APLNDC-Y0000027256-340 at '277 [3 14]

"Somewhat Important") in its summaries [705] I have collected data on the importance of the iPhone's features and attributes in the iPhone purchase decisions from the iPhone Buyer Surveys for the period from Q2 2010 to Q4 2011 In the first two quarters, respondents were not asked whether "Attractive appearance and design" were important in their purchase decisions

350 I have calculated a reasonable apportionment for design by comparing the weight of top box and top-2 box percentages of "attractive appearance and design" to all other features As an example, in the Q4 2010 survey, 50 percent of iPhone buyers in the U S named the "Attractive appearance and design" as a very important feature in their decision to purchase the iPhone [706] In comparison, 80 percent, 77 percent, 69 percent, 68 percent, 57 percent, 55 percent, 53 percent, 47 percent, 36 percent, 27 percent, 17 percent of the respondents considered the "Web capabilities," "Ease of use," "Improved battery life," "The ability to download and use apps," "Value for price paid", "Multitasking," "5MP camera with LED flash," "Retina Display," "HD video," "Face Time video calling," and "The ability to edit video on the iPhone 4 with iMovie" as very important features, respectively [707]

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[705] Footnote 703 iPhone Buyer Survey, Apple Market Research & Analysis, FY10 - Q4, APLNDC-Y0000027256-340 at '267-278 [3 14]

[706] iPhone Buyer Survey, Apple Market Research & Analysis, FY10 - Q4, APLNDC-Y0000027256-340 at '277 [3 14]

[707] iPhone Buyer Survey, Apple Market Research & Analysis, FY10 - Q4, APLNDC-Y0000027256-340 at '267-'285 [3 14]

351 Therefore, to analyze the relative importance of the "Attractive appearance and design" in comparison to the other iPhone's features and attributes, I have divided the percent of iPhone survey respondents that named the "attractive appearance and design" of the iPhone as very important by the cumulative percent of respondents that considered certain iPhone's features as very important 50% / (80% + 77% + 69% + 68% + 57% + 55% + 50% + 53% + 47% + 36% + 27% +17%) [708] This methodology indicates that the "attractive appearance and design" of the iPhone has a 7 9 percent share of the "very important" category, which I use as the apportionment [709] I have performed this analysis for each quarter from Q4 2010 to Q4 2011 On average, the "attractive appearance and design" of the iPhone are considered to be very important in purchase decision making, relative to all other iPhone features and attributes, by 7 5 percent of the iPhone buyers [710]

352 I have also replicated this analysis for the "Attractive appearance and design" feature ranked as the top-2 box ("very import ant" and "somewhat important") by respondents in their iPhone purchase decisions On average, 8 5 percent of the iPhone buyers considered the "attractive appearance and design" of the iPhone to be "very important" or "somewhat important" in purchase decision making, relative to all other iPhone's features and attributes, in the Q4 2010 - Q4 2011 time period [711]

[708] Schedule 8 4 [1 2]

[709] Schedule 8 4 [1 2]

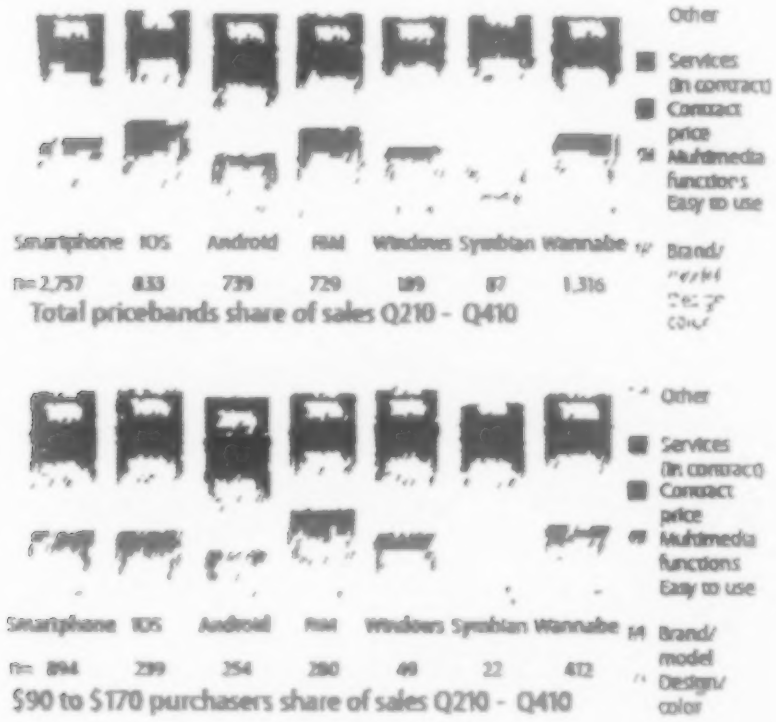
[710] Schedule 8 4 [1 2]

[711] Schedule 8 3 [1 2]

(2) ComTech Reports

353 Apple commissioned ComTech to conduct longitudinal consumer surveys to study "ownership and purchasing of device, carrier connections, billing and usage in the mobile phone market." [712] In particular, ComTech Reports provide snapshots of consumer handset purchasing by reason for handset choice, as shown on Figure 47 below [713]

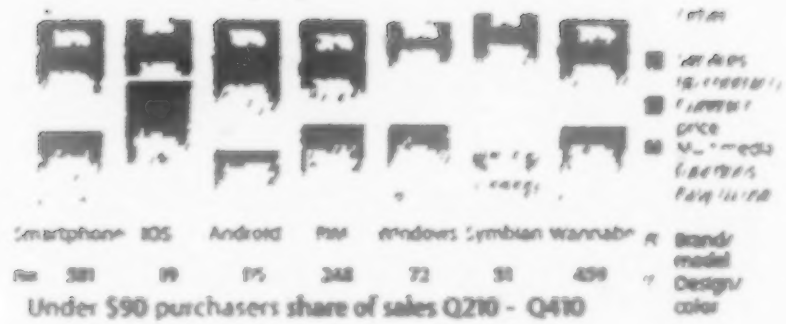
Figure 47: Handset Purchase by Priceband and by Reason for Choice[714]

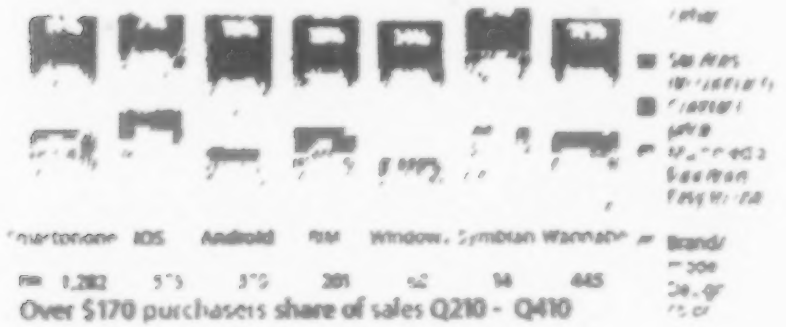


[712] ComTech United States Pricing Analysis, February 18, 2011, APLNDC0002521932-964 at '936 [14 10]

[713] ComTech United States Pricing Analysis, February 18, 2011, APLNDC0002521932-964 at '957 [14 10]

[714] ComTech United States Pricing Analysis, February 18, 2011, APLNDC0002521932-964 at '957 [14 10]





Handset acquisition spend based upon subsidized purchasing, figures are the average price paid by the consumer and not RRP Low base size warning – please use this data with caution, Indicative results only

354 According to a February 18, 2011 ComTech Report, only two percent of iPhone owners purchased iPhone because of its "design and color" in Q2 2011—Q4 2010 [715] Five percent of respondents listed "design and color" as the reason for the Android smartphone ownership [716] Overall, only four percent of respondents chose a smartphone for the reason of "design and color "[717]

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[715] ComTech United States Pricing Analysis, February 18, 2011, APLNDC0002521932-964 at '957 [14 10]

[716] ComTech United States Pricing Analysis, February 18, 2011, APLNDC0002521932-964 at '957 [14 10]

[717] ComTech United States Pricing Analysis, February 18, 2011, APLNDC0002521932-964 at '957 [14 10]

355 I have collected the data on the handset purchase reasons from the ComTech Reports for the period from Q2 2010 to Q4 2011 On average, 2 percent, 4 percent, and 3 percent of respondents purchased the iPhone, the Android smartphone or any smartphone, respectively, because of the "design and color" in the Q2 2010—Q4 2011 time period [718] These are additional measures of apportionment of the value of design

(3) J.D. Power and Associates Studies

(a) Weight given to design category

356 J D Power and Associates has conducted Wireless Smartphone Satisfaction Studies to understand attitudes, experiences and behavioral characteristics of smartphone users and determine factors that impact customer satisfaction across smartphone user segments [719] In particular, J D Power and Associates uses its proprietary model to break down a smartphone into factors and attributes One of the attributes that J D Power and Associates asks about is "Styling of wireless phone," which falls within the "Physical Design" category along with "Strength and durability," "clarity of display," and "weight of wireless phone" [720] According to the weightings in the November 2011 J D Power and Associates study, a weighting of 20 percent was given to the smartphone's physical design, and within the physical design, 25

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[718] Schedules 8 5, 8 6, and 8 7 [1 2]

[719] J D Power 2011 Wireless Consumer Smartphone Satisfaction Study(SM) Volume I - Management Report, March 2011, SAMNDCA10246338-445 at '343 [13 9]

[720] J D Power and Associates 2011 U S Wireless Mobile Phone Study Results Presentation Volume 2, November 14, 2011, SAMNDCA00282033-088 at '035 and '062 [13 7]

percent was assigned to "Styling of wireless phone."[721] Therefore, styling was assigned a total weight of five percent (20% * 25%).

Figure 48: Smartphone Factors and Attributes[722]

357 A March 2011 J D Power and Associates study included "visual appeal of your wireless phone" within the "physical design" category. The weighting for the physical design category was 23 percent, and the visual appeal had a 22 percent weighting of the

[721] J D Power and Associates 2011 U S Wireless Mobile Phone Study Results Presentation Volume 2, November 14, 2011, SAMNDCA00282033-088 at '035 and '062 [13 7]

[722] J D Power and Associates 2011 U S Wireless Mobile Phone Study Results Presentation Volume 2, November 14, 2011, SAMNDCA00282033-088 at '035 and '062 [13 7]

category, which corresponds to a total weighting of about 5 percent of the smartphone (23% * 22%) [723]

358 These data points are good measures of an appropriate apportionment for design because a third party (J D Power and Associates) has determined the weightings and uses the weights in its industry consulting

(b) Survey results

359 Similar to Apple's studies, in its March 2011 study, J D Power and Associates also analyzed the smartphone selection process [724] According to the study, reasons for choosing the smartphone manufacturer included "Liked Overall Design / Style" (45%) "Internet Capable" (44%), "Touch Screen" (43%), and others presented in Figure 49 below [725]

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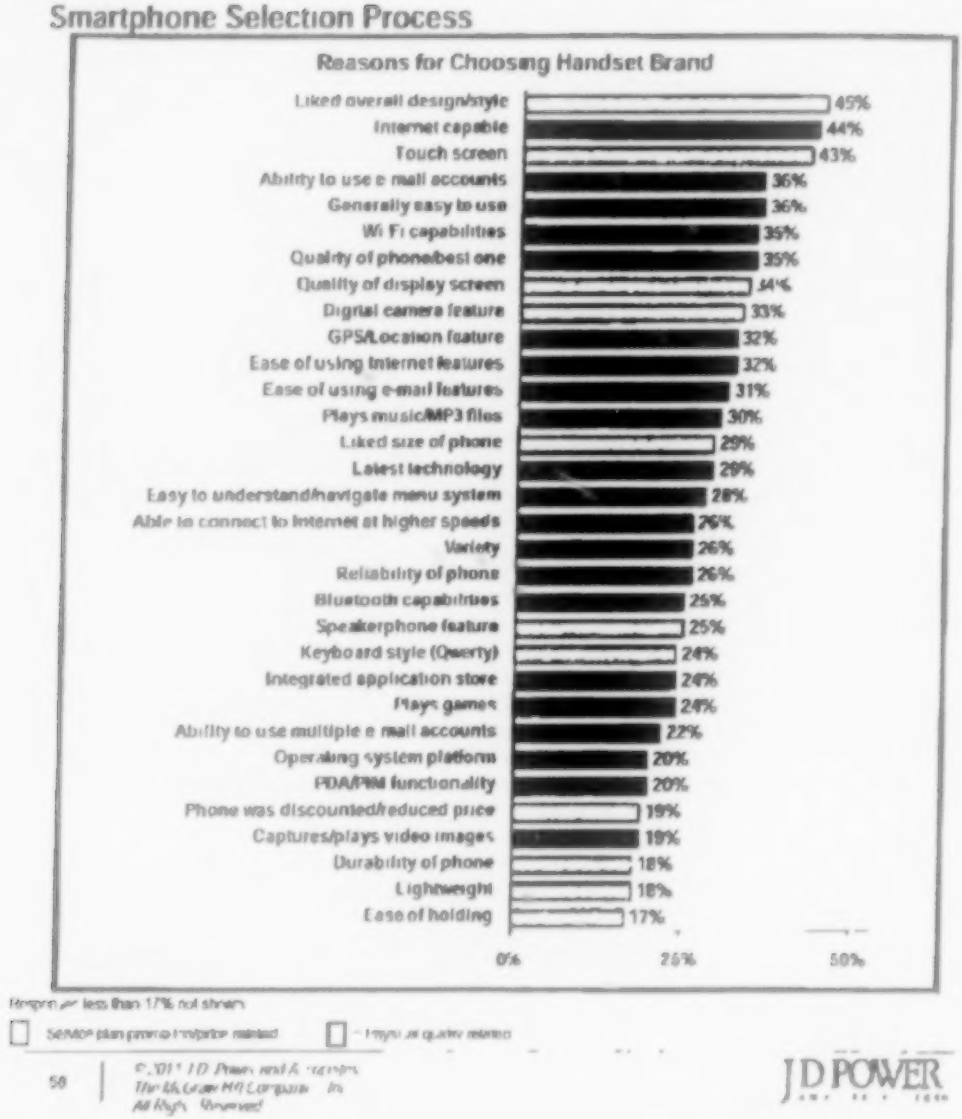
[723] J D Power 2011 Wireless Consumer Smartphone Satisfaction Study(SM) Volume I - Management Report, March 2011, SAMNDCA10246338-445 at '380 [13 9]

[724] J D Power 2011 Wireless Consumer Smartphone Satisfaction Study(SM) Volume I - Management Report, March 2011, SAMNDCA10246338-445 at '393-'400 [13 9]

[725] J D Power 2011 Wireless Consumer Smartphone Satisfaction Study(SM) Volume I - Management Report, March 2011, SAMNDCA10246338-445 at '395 [13 9]

Figure 49: Reasons for Choosing Handset Brand[726]



360 To analyze the importance of the "Overall design/style"relative to the other reasons for choosing a handset brand, I have divided the percent of

[726] J D Power 2011 Wireless Consumer Smartphone Satisfaction Study(SM) Volume I - Management Report, March 2011, SAMNDCA10246338-445 at '395 [13 9]

respondents that listed the overall design/style as a purchase reason by the cumulative percent of respondents that considered other reasons in their smartphone selection process I have calculated a 5 percent apportionment based on the survey responses [727]

(4) Conclusion

361 The consumer surveys discussed in this section provide a relatively consistent range for apportionment of value to design, ranging from 1% to 8 5% Based on my review of these surveys, I have concluded that five percent is an appropriate apportionment of value to design as a whole [728]

b) Apportionment of Design to Specific Design-Related IP at Issue

362 The five percent determined above is a maximum value for design because, as discussed above, the design-related IP at issue in this lawsuit is only a small portion of the overall design of a smartphone

363 The J D Power and Associates studies discussed above provide a basis to compare the success of Apple's products relative to the industry In the March 2011 study, Apple outperformed all other manufacturers in the physical design factor, scoring 36 index points above the industry average as shown in Figure 50 below [729] Apple also exceled in all five

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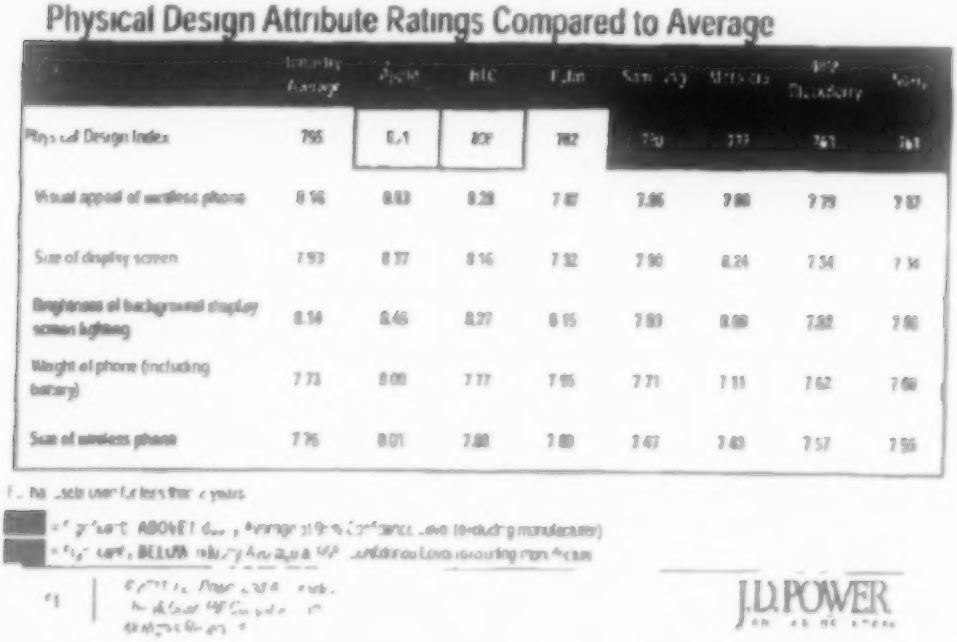
[727] Schedule 9 4 [1 2]

[728] Schedule 7 1 [1 2]

[729] J D Power 2011 Wireless Consumer Smartphone Satisfaction Study(SM) Volume I - Management Report, March 2011, SAMNDCA10246338-445 at '388 [13 9]

attributes of the physical design, including "Visual appeal of wireless phone," "Size of display screen," "Brightness of background display screen lighting," "Weight of wireless phone," and "Size of wireless phone,"[730] In particular, in the "Visual appeal of wireless phone" attribute, Apple performed 0 47 points or 6 percent above the industry average of 8 16 ((8 63 - 8 16) / 8 16) [731]

Figure 50: Physical Design Attribute Ratings Compared to Average[732]



364 In the survey asking about reasons for choosing a smartphone, 51 percent of the respondents

[730] J D Power 2011 Wireless Consumer Smartphone Satisfaction Study(SM) Volume I - Management Report, March 2011, SAMNDCA10246338-445 at '388 [13 9]

[731] Schedule 9 3 [1 2]

[732] J D Power 2011 Wireless Consumer Smartphone Satisfaction Study(SM) Volume I - Management Report, March 2011, SAMNDCA10246338-445 at '388 [13 9]

indicated a reason that they selected Apple was the overall design/style [733] This is 6 percent higher than the industry average of 45 percent, as shown in Figure 51 below [734] In relative terms, the respondents valued Apple's overall design/style 13 percent higher than the overall design/style of all smartphone manufacturers on average in their smartphone selection process (6% / 45%)

Figure 51: Selection Process Among Smartphone Manufacturers[735]

Selection Process Among Smartphone Manufacturers[1,2]

Liked overall design/style	45%	51%	49%	50%	34%	42%	38%	41%
Internet capable	64%	48%	69%	57%	19%	37%	37%	39%
Touch screen	43%	58%	61%	58%	16%	56%	11%	52%
Ability to use e-mail accounts	36%	40%	39%	50%	14%	28%	33%	29%
Generally easy to use	36%	45%	32%	35%	16%	33%	31%	30%
Wi-Fi capabilities	39%	50%	42%	43%	12%	27%	18%	26%
Quality of phone functions	35%	49%	36%	39%	23%	18%	25%	23%
Quality of display screen	34%	41%	40%	45%	17%	28%	42%	32%
Digital camera feature	33%	34%	31%	44%	27%	32%	45%	34%
GPS/Location feature	32%	40%	40%	50%	16%	25%	19%	27%
Ease of using Internet features	32%	44%	33%	40%	11%	26%	21%	21%
Ease of using e-mail features	31%	43%	27%	38%	10%	24%	28%	20%

[illegible]

365 Based on the above analyses, I conclude that design in total should only be apportioned five percent

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[733] J D Power 2011 Wireless Consumer Smartphone Satisfaction Study(SM) Volume I - Management Report, March 2011, SAMNDCA10246338-445 at '396 [13 9]

[734] J D Power 2011 Wireless Consumer Smartphone Satisfaction Study(SM) Volume I - Management Report, March 2011, SAMNDCA10246338-445 at '396 [13 9]

[735] J D Power 2011 Wireless Consumer Smartphone Satisfaction Study(SM) Volume I - Management

of Samsung's profits on accused products What Apple appears to add in value to the design of their products above the average industry participant is only an increase of 6% to 13% Using an average of 10% better design, this would imply that the value of all the Apple designs to average design value would be 0 5% of profits (5% X 10%)

366 To be conservative, I would apportion 1% of Samsung's profits to possible design elements allegedly taken from Apple

c) Apportionment based on design arounds

367 As I describe below in *Georgia-Pacific* factor 9, I have concluded that Samsung had available to it acceptable, non-infringing alternatives for the trademarks, GUI Design Patents, and trade dress These available alternatives indicate that the true apportionment to

Apple's asserted design-related IP is zero (or at most the expense of the design around discussed in *Georgia-Pacific* factor 9)

368 In addition, I note that the trademarks at issue area small part of the total population of trademarks used on Samsung's accused products For example, I or my staff has counted the number of icons in the pictures of several accused products included in the Expert Report of Susan Kare, based on this analysis, it appears that Samsung's accused products include between 34 and 60 icons [736]

[736] Schedule 17 [1 2]

d) Conclusion on Apportionment

369 In my opinion, Apple's design-related IP should be apportioned at most to be one percent of Samsung's profits after deductible expenses.

5. Samsung's Unjust Enrichment

370. As discussed above, STA's and SEA's profits after deductible expenses are negative (losses), therefore STA and SEA did not have any unjust enrichment related to the sales of the accused products.[737]

371 Applying the maximum apportionment of one percent to Samsung's profits after deduction expenses results in Samsung's Unjust Enrichment related to its infringement of the design-related IP calculated as follows:

Figure 52: STA, SEA, and SEC's Unjust Enrichment—Different Time Periods[738]

Figure 52: STA, SEA, and SEC's Unjust Enrichment - Different Time Periods[738]

	STA, SEA and SEC Profit After Deductible Expenses		
	STA, SEA and SEC Profit After Deductible Expenses	Apportionment	Apportioned STA, SEA and SEC Profit After Deductible Expenses
	(a)	(b)	(c)
2010	[redacted]		
2011			
Total			
April 15 - December 31, 2011			
June 18 - December 31, 2011			

[737] Schedule 4 [1 2]

[738] Schedule 4 [1 2]

[1] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

[Filed 06/30/12]

Case No. C-11-01846 LHK

APPLE, INC., a California Corporation,

Plaintiff,

vs.

SAMSUNG ELECTRONICS CO., LTD., a Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company

Defendants.

ORDER GRANTING-IN-PART AND DENYING-IN-PART MOTIONS TO EXCLUDE EXPERT TESTIMONY

Apple moves to exclude testimony of the following eight Samsung experts: (1) Itay Sherman; (2) Sam Lucente; (3) Mark Lehto, (4) Nicholas Godici; (5) George Mantis; (6) Michael Mazis; (7) Michael Kamins, and (8) Michael Wagner. Samsung, in turn, moves to exclude testimony of the following eight Apple experts: (1) Terry Musika, (2) John Hauser; (3) Henry Urbach; (4) Susan Kare; (5) Russell Winer; (6) Sanjay Sood; (7) Michael Walker, and (8) Richard Donaldson. The Court GRANTS-IN-PART and DENIES-IN-PART Apple's motion to exclude, and

GRANTS-IN-PART and DENIES-IN-PART Samsung's motion to exclude.

8. Michael Wagner

Apple moves to exclude Mr Wagner's opinions regarding (1) apportionment of damages with respect to Apple's design patents, and (2) apportionment of damages with respect to Apple's [9] trade dress claims. Apple also moves to exclude (3) Mr. Wagner's opinion that evidence of "demand for the patented features" is required under *Panduit Corp. v Stahlin Bros. Fibre Works, Inc.*, 575 F.2d 1152, 1156 (6th Cir 1978)

Apple argues that Mr. Wagner's apportionment of Samsung's profits based on Apple's design patents should be excluded as inconsistent with 35 U S.C. § 289, which provides that a design patent holder is entitled to an infringer's total profits. *See* 35 U.S.C. § 289 (the infringer "shall be liable to the [patent] owner to the extent of his total profit"); *Nike Inc. v. Wal-Mart Stores, Inc.*, 138 F.3d 1437, 1442-43 (Fed. Cir 1998) (noting that Congress removed "the need to apportion the infringer's profits between the patented design and the article bearing the design" when it passed the Act of 1887, which was subsequently codified under 35 U S C § 289). Samsung's opposition cites no legal basis for Mr. Wagner's apportionment of damages, in clear contravention of 35 U.S.C. § 289, instead appealing only to procedural and policy arguments for allowing apportionment in this case. Because Mr Wagner's apportionment of damages with respect to Apple's design patent infringement claims is contrary to law, it is unreliable under FRE 702 and *Daubert* and unduly prejudicial under FRE 403. Apple's motion to exclude Mr. Wagner's testimony apportioning damages with respect to Apple's design patent claims is therefore GRANTED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

[Filed 07/19/12]

Case No.. 11-CV-01846-LHK

APPLE INC., a California corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., A Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

MINUTE ORDER AND CASE MANAGEMENT ORDER

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* * *

3. Apple's motion in limine #3, to exclude evidence or argument regarding claimed prior art devices that do not qualify as prior art, is GRANTED in part and DENIED in part, for the reasons stated on the record. The motion is GRANTED in that the following may not be introduced as prior art references under 35 U.S.C. § 102: KR30-0452985; Sharp Softbank; KU990Viewty; LG KS20; and the internal Samsung documents; the LG Chocolate; and the F300. The motion is DENIED in all other respects. In other words, the LG KE 750 Prada may

be admissible as a prior art reference under 35 U.S.C § 102. All the evidence identified in this paragraph is admissible for other purposes, including to rebut an allegation of copying.

* * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

[Filed 07/29/12]

Case No. 11-cv-01846-LHK

APPLE INC., a California corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., A Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

APPLE'S OBJECTIONS TO
SAMSUNG'S OPENING STATEMENT
DEMONSTRATIVE EXHIBITS

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* * *

10 This slide misleadingly mixes *unreleased* Samsung phones with commercially *released* products. In doing so, it creates the misimpression that Samsung was releasing phones with allegedly iPhone-like designs as early as 2006, before the iPhone was released. Several of the depicted devices, including the Flipper, Vessel, Card3, Warp, and Framer, were not produced to Apple for inspection during discovery.

11-19 Judge Grewal has already stricken Samsung's theories that it independently developed smartphones with designs similar to the iPhone before that product was released. In particular, Judge Grewal excluded the opinions of Samsung's invalidity expert, Mr. Sherman, concerning the F700 design, its related design patents, and related development documents. (Dkt. No. 1144 at 5 ¶ 12; *see also* Dkt. No. 939 Ex 27 at 39-40)

Unable to rely on the F700 and related materials, Samsung again tries to evade Judge Grewal's order by referring to the F700 by its internal names, such as "Bowl" and "Q Bowl." (Bartlett Decl. Ex. 1 at 15:1-16:2.) This is improper. As with Samsung's prior attempt to rely on the F700, Samsung's references to the "Vessel," "Q-Bowl," "Bowl," "Slide," and "iReen" in these slides all suffer from the same defects. They were omitted from Samsung's invalidity interrogatory responses, they were omitted from Samsung's non-infringement interrogatory responses, and they were omitted from Samsung's non-infringement expert reports.

* * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

[Filed 07/29/12]

Case No.: 11-cv-01846-LHK

APPLE INC., a California corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., A Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants

SAMSUNG'S RESPONSES TO APPLE'S OBJECTIONS TO SAMSUNG'S OPENING SLIDES

* * *

Slide 10 Apple objects to Samsung's slide 10 as presenting scaling issues, and disclosing phones and mockups that are only admissible for limited purposes and that were allegedly not produced for inspection. The images on slide 10 are being offered not as invalidating prior art, but rather to show independent creation and to rebut allegations of copying, consistent with the Court's prior orders. (Dkt. 1267) The Court has rejected Apple's efforts to exclude documents showing a lack of copying so this objection is overruled. Issues of scaling therefore do not have the same importance as they do in the infringement analysis.

Nothing prevents Samsung from showing trial exhibits in its opening simply because they may be subject to a limiting order later. In addition, although Apple has not specified which models it claims were not produced for inspection, photos of the models were produced during discovery, and many were exhibits to the reports and declarations filed by Apple's own experts. For example, numerous images of the models Apple now complains of were produced at SAMNDCA00321707-766 on February 3, 2012, well before the close of fact discovery, and are contained in Samsung's Ex. 625

Slides 11-19: Apple's objection to slides 11-19 on the ground that they contain "undisclosed theories" is meritless. Samsung has argued since the inception of this case that it has not copied Apple's products, and that it independently pursues its own designs. Apple cannot claim surprise now that the time has come to prove those theories using documents that were timely produced to Apple. In addition, Apple's argument that slides 11-15 contain undisclosed models is untrue. Samsung timely produced photos of the models depicted in the slide, and Apple does not claim otherwise, as well as the physical models it had. Like Apple, Samsung did not retain all of its models going back almost a decade, but where it did not, Samsung timely produced images of them.

* * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

[Filed 07/29/12]

Case No.. 11-CV-01846-LHK

APPLE INC., a California corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., A Korean business entity, SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

ORDER ON APPLE'S OBJECTIONS TO SAMSUNG'S OPENING SLIDES

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10 Overruled. Consistent with this Court's ruling on the motions in limine (ECF No. 1267), the unreleased Samsung phones can be admissible to rebut allegations of copying, even if they do not meet the requirements of § 102. Moreover, the use of the term "mock-up" in the slides lessens potential juror confusion that all of the Samsung phones were released However, if Samsung did not timely produce in discovery the images of the Flipper, Vessel, Card3, Warp, and Framer devices, the Court will sustain Apple's objection.

11-19 Sustained Pursuant to Judge Grewal's Order, theories of invalidity based on the evidence and references in slides 11-19 were not timely disclosed in Samsung's invalidity/non-infringement contentions and therefore are excluded.

* * *

[283] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No.. 11-CV-01846-LHK

APPLE INC., a California corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., A Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

San Jose, California
July 31, 2012

Transcript of Proceedings before the Honorable
LUCY H KOH United States District Judge

Volume 2
Pages 283-555

APPEARANCES ON NEXT PAGE

Official court reporter: Lee-Anne Shortridge, CSR, CRR Certificate number 9595

* * *

[Direct Examination of Christopher Stringer]

[470] Q Sir, can you tell us just generally, definitionally, what does an industry designer do?

A Well, at Apple, our role is to imagine objects that don't exist and to guide the process that brings them to life

And so that includes defining the experience that a customer has when they touch and feel our products.

So it's managing the overall form and the materials, the textures, the colors. It's managing the details

And it's also working with engineering groups to, as I say, bring it to life, to bring it to the market and to building the craftsmanship that it absolutely needs to have to have that Apple quality.

* * *

[484] Q Let's talk about the iPhone for a minute

What—if you can describe it for us, what, if anything, were you trying to achieve in designing the iPhone?

A We—we were looking for a new, original, and beautiful object, something that would really wow the world.

We were entering a category that we'd never participated in before, and the category that we did not enjoy. There were no cell phones that we loved.

So this was something that we really cared deeply and passionately about, producing something for ourselves.

We—as always, we wanted to create something that seemed so, so wonderful that you, you can't imagine how you could follow it.

Of course, you can because if you look at the history of our products, we've done that time and time again.

But you want to create the simplest, purest manifestation of what that object can be, something that people can love.

Q Do you recall approximately how long you worked on the design of the iPhone?

[485] A I have no idea. I'd have to look at documentation for this. But it was a long time.

Q Years?

A I think so.

* * *

[493] Mr. Stringer, let me hand you what has been marked as exhibit JX 1000 (handing) Can you tell me what that is, sir?

A This is the iPhone, the original.

Q Can you tell us how, how of these various models and pictures that we've looked at, how did you come about to select that design as the final design for the iPhone?

A It's very simple. It was the most beautiful of our designs. We sometimes don't recognize it instantly. It may take some energy and adding detail. But when we realized what we had, we knew it

Q At any time during the development of the iPhone, did—were there any doubts about whether or not you were going to be successful with that product?

A Absolutely. I'm aware that Steve Jobs himself had doubts

We were doing something unprecedented. [494] The world had never seen anything like this. There was legions of phones available. None were very satisfying.

And this broke new ground. It was more than a phone Smartphones existed, but they were more like tiny little computers.

We came up with something that was breathtaking. It was a revolution.

Q Can you—

A And the challenges in terms of producing that product were enormous.

Q Can you give—I'm sorry

Can you give us some examples of the production problems?

A Production problems, we had many. Producing the glass was very challenging. We were putting glass in close proximity to hardened steel. If you drop this, you don't have to worry about the ground hitting the glass You have to worry about the band of steel surrounding the glass hitting the glass.

So there was an enormous amount of energy put into the engineering of that interface.

Secondly, we were putting holes in the glass. I think we—people thought we were crazy.

[495] But we, we just solved the engineering issues. It was a huge, huge amount of work.

The band itself was challenging. We insisted on this high polished steel, continuous band around the product, and if we ignore the antenna issues of that generation, which were enormous at that point in

time, and focus on the manufacturing issues alone, there's a long list of challenges there.

In order to, to make it work, we had to use a very high, high grade of steel because we couldn't have it sort of deflecting into the glass.

That was incredibly hard to polish. That was once you got the shape right.

It was very, very difficult to machine, and machining these volumes was unprecedented at that time.

Q Were any of the design decisions that you made about the iPhone, were they made in order to make the iPhone cheaper or easier to manufacture?

A No.

Q Were you ever told by anyone—were any of the design choices that you made, made in order to make it work better as a telephone?

A No.

[496] Q Were you ever told by anyone that you had to pick particular designs because of requirements from the components or the internal elements of the phone?

A No.

Q How—Who was in control of your design process ultimately?

A We were in control of our design process.

Q Is there a reason why you didn't put the Apple logo on the front face—on the front face of the face?

A First of all, it—it didn't look good.

And we also knew from our experience with iPod, if you make a startlingly beautiful and original design, you don't need to. It stands for itself It becomes a cultural icon.

Q What do you mean when you use the word "icon," sir?

A Icon, it's a hard credential, really. I think that becomes true with enormous success.

But if you see something across the room and you know what it is and you can simply describe it, it's an icon.

MR. MCELHINNY Your Honor, I would move JX 1000 into evidence

* * *

[556] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. C-11-01846 LHK

APPLE INC., a California Corporation,

Plaintiff,

vs.

SAMSUNG ELECTRONICS CO., LTD , a Korean business entity, SAMSUNG ELECTRONICS AMERICA, INC., a New York Corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

San Jose, California
August 3, 2012

Transcript of Proceedings before the Honorable
LUCY H KOH United States District Judge

Volume
Pages 556-930

Appearances on next page

Official court reporter: Lee-Anne Shortridge, CSR, CRR
Certificate number 9595

* * *

[Direct Examination of Philip Schiller]

[599] Q What was the initial reaction to the announcement?

MR. PRICE. I'm going to object, Your Honor. Vague, by whom, when?

THE COURT Sustained.

BY MR MCELHINNY·

Q What was the media reaction to the announcement?

A We had a huge amount of press, and as you would expect, the range of the reaction was everything you could imagine from excitement about this breakthrough product to doubt that Apple could succeed at this or do a good job at it.

* * *

BY MR. MCELHINNY:

Q As the head of marketing, did you become aware that people expressed doubt as to the success of the iPhone product?

A Yes, absolutely.

Q Can you give us an example?

A We had many press reports, from the press, from analysts, even from competitors who spoke out against our announcement and said that we're going to fail. Even Microsoft said we were going to fail The head of Palm said we were going to fail. There were many people expressing doubt.

Q And did they give reasons why they thought it would fail?

A Yes, absolutely.

Q And do you recall any of the reasons that were given at the time?

[601] A Probably the biggest reason was that Apple had never had a phone before and was new into the phone business and they expected that we would fall on to our face and do a bad job of it.

Q Sir, if you look at exhibit 133 in your exhibit binder there, PX 133.

A Yes.

Q Can you tell me what that document is, please?

A This is an article from the *New York Times* that appeared the day after the launch of the iPhone written by David Pogue, one of the preeminent —

* * *

[625] As the head of marketing, in Apple's view, has the iPhone been a successful product?

A Yes, it's been very successful

Q And what is your understanding of the reasons for its success?

* *

THE WITNESS: I think there are many reasons for the iPhone success.

For me, what I believe is very prevalent is, number one, people find the iPhone designs beautiful.

Number two, it's an incredibly easy-to-use device with all of our software inventions to make it intuitive and simple and well integrated.

I think, third, the fact that we do such a good job integrating hardware and software together to make one experience.

And, fourth, I think because it has—we've really taken the entire experience, every element of it, hardware, software, applications, [626] Internet services and taken responsibility to make all those things work well for the customer. I think that's sort of my list of what's made it successful.

Q Has the iPad been a successful device?

A Absolutely.

Q And what are your understandings for the reasons of its success?

A Well, first I would repeat similar items as with the iPhone, that it's absolutely beautiful, that it's very easy to use with its software; that it's integrated together hardware and software; and the responsibility we take for all those services.

But I would add one more in addition to the iPhone, which is we've actually shown people the value that this incredibly beautiful product can have in their lives and why they want one when they never had before. That was one of the biggest challenges.

Q Could you please publish PDX 8.

Sir, these are photographs of the phones that are already in evidence in this case.

I notice that when you looked at the PTO display, you immediately recognized, you talked about the distinctive nature of the iPhone.

[627] What is it about these designs that causes you to call them distinctive?

A Well, as a marketing person, it's important to me that a product be unique, be distinctive, be consistent over time.

What you're seeing up here, you may think it's just four pictures of phones, but it actually represents many years of iPhone to Apple. We don't bring out new versions every month We bring them out about once a year.

And you see the very consistent shape of it. It's rounded corners, it's rectangular shape, its full glass face with the black screen and black area around the screen just seen as one. You see the colorful icons, the applications, the squares with their rounded corners.

You see the box along the bottom which we're known for I think there are a number of facts altogether that make it very obvious that it's an iPhone.

* * *

THE COURT: Oh, all right.

BY MR. MCELHINNY:

Q Which iPhones incorporate the design features that you just discussed?

A They all do.

Q If you would put up, please, PDX 9.

These are pictures of the iPad in evidence.

Again, what is it about these, the shape of these devices that makes you think that they're distinctive?

A As a marketing person, it's important to me that the image of the product be simple, clear, consistent over time and what you're seeing is the iPad has had a consistent design of the large rectangle with four rounded corners, a full glass face with a screen

and the area around the screen just become one surface. That we have a beautiful set of icons that are colorful, squares with rounded corners. A dock for the most commonly used icons all on the bottom

And altogether it's a simple, beautiful [629] look that has stayed consistent with across the product line.

Q In your experience, does the design of these products contribute to their success?

A Absolutely.

Q And why do you say that?

A Because I believe customers value beautiful products and products they can associate and identify with the company who's made them.

Q Sir, if you look in your binder at exhibit 1—PX143.

A Yes.

Q What is exhibit PX 143?

A This is an Apple customer or buyer survey of people who purchased iPhones.

Q Can you tell me the dates of it, please?

A This was from the fourth fiscal quarter in fiscal year 2010.

* * *

[635] "And the question, of course, there was more than one, this one was "How important is attractive appearance and design?"

And then what you see there in the bars is the results.

Q I'm sorry. So we're on track. What does attractive appearance and design mean in your business?

A We're simply trying to understand from the customer's perspective the actual physical appearance, the look of the product, the iPhone, and what they felt about how important that appearance or look was in their own decision to buy it.

Q All right. Let me hammer the obvious later. This is not just the result of a single survey; is that right?

A No, it is not.

Q It covers a period of time?

A Yes, it does.

Q A number of surveys?

A Yes, it does.

Q And what, what does this summary tell us about the importance of design to your customers?

A This survey result, across time, across many [636] customers, affirms for me the perspective that, that most customers believe that attractive appearance and design is very important to their choice of buying a product, and specifically our product.

Q And how do you get that conclusion from these numbers?

A We asked the customers, in this question, to rate this importance on a scale of 1 to 5, with the top two in that scale being the attractive appearance and design is either somewhat importance to the purchase or very important to the purchase.

And in marketing lingo, we call that the top two box, those top two choices.

And you usually combine those for your measure of what customers think whether something is important or not.

And—Now I apologize the way you usually show a chart like this—

Q So when you talk about top two boxes, you're talking about the bottom two boxes?

A One of the funny things in marketing is we call them the top two, but in a chart, they're usually the bottom colors in that, so it's the dark blue and medium blue that you see there.

[637] So the way I look at these when I see these reports is you combine those two.

So, for example, the first bar shows 46 percent, plus 35 percent of the top two boxes, or 85 percent of those customers believed that it was, the appearance and design was important to their purchase of the iPhone.

Q Does Apple take product design seriously?

A Extremely.

Q Why?

A I believe one of the things the market looks at from Apple is beautiful products. It's one of the things we're known for. It's one of the things we strive to create, and I think it's part of who Apple is. We create beautiful products.

* * *

[665] THE WITNESS: I absolutely believe it's had an impact on our sales.

BY MR. MCELHINNY:

Q And we'll have experts come in to talk about the numbers later, but what is the overall effect, sir?

A One of the jobs of my team is the forecasting process and understanding impacts of these things, and we have to guess at this every day.

And it is our belief that customers, some customers are choosing to buy a Samsung product because one of the things it does is look a lot like the iPhone, a lot like the iPad

I also think it has an effect around those first purchases where subsequent purchases then are affected because you're used to an ecosystem that you've started on, and the people around you are affected because if one person in your family has a certain product that runs a certain operating system and uses certain applications, others are more likely in that family to choose a similar product.

So I think it has effects in the initial sales, as well as on related sales.

MR. MCELHINNY: Thank you, Mr. Schiller.

* * *

[Cross Examination of Philip Schiller]

[675] Q And it's your experience that these are things which consumers want, that they want screens that are larger so they can see web pages, movies, you know, within the limit of the, you know, being useful in your hand?

A Larger screens are—can be a benefit to users. It's not the only thing they want, but it's one thing that they want.

Q And when, when you—when Apple released the iPhone in 2007, it expected competition in the smartphone industry with phones that you could watch movies on or view web pages; correct?

A We expected competition in the smartphone space, yes.

Q Because you didn't think that Apple—Apple didn't think that it had the exclusive right to give the consumer a smartphone with a screen that could Exhibit web pages, movies, music; right?

A We did not have exclusivity on playing movies or music on phones

* * *

[696] BY MR. PRICE:

Q Let me ask you, then, about why customers buy phones, and you had looked at Exhibit 143, I believe it was, and there are documents, and this is one of the Apple surveys?

A This is, as we discussed earlier, an iPhone buyer survey.

Q So these are people who are already Apple customers; right?

A Yes.

Q So if you look at this survey, it doesn't tell you anything about why Apple lost a sale because these are sales that Apple won; right?

[697] A Correct. These are customers who purchased our product

Q So, for example, you wouldn't expect to see in here someone say I bought an Apple because it allows

me to look at flash, the videos; right? You wouldn't expect that?

A I'm sorry. That's not how we run the surveys.

Q Pardon?

A We ask specific questions on the survey, what you describe is more of an open-ended discussion. That's not how we run our survey.

Q But you wouldn't ask them did you buy the iPhone because it's so good at looking at videos and the use of flash?

A I would not ask them about the use of flash on the iPhone.

Q Because the iPhones don't do that?

A We don't run flash plug ins.

Q And you couldn't ask them whether or not they bought the iPhone because it has a replaceable battery because it doesn't

MR. MCELHINNY: This is beyond the scope, your Honor, and irrelevant to any of the issues in this case.

THE COURT: Overruled.

[698] THE WITNESS: We do not ask if they purchased the iPhone for the feature of a removal battery.

BY MR. PRICE:

Q Because it doesn't have one?

A It does not have a removable battery.

Q And you didn't ask them whether they bought The iPhone because it had a bigger—a 4.5 inch screen, or even a 4 inch screen?

A We do not ask them if they bought one for those reasons.

Q And those might be questions that are relevant to someone buying a Samsung phone; is that correct?

A You would have to ask them. I don't do market research for Samsung

Q That's fair enough.

So basically from these documents here, you can't make any conclusions as to why a Samsung purchaser bought a Samsung phone, correct? This is just what Apple people, the reason they—the reason you won, the reason they bought your phone?

A These are Apple surveys, yes.

Q And there's a section on ease of use, and you don't ask specifically what—I mean, you don't identify what "ease of use" is in the survey; [699] correct?

A We ask about ease of use. We don't further define it into subcategories, no.

Q And you believe that Apple—the iPhone has hundreds of features that go to ease of use; correct?

A There are many features that contribute to ease of use.

Q And this doesn't demonstrate that you lost a single customer to Samsung because of the Samsung appearance, correct?

A This survey does not ask that question of a customer if they bought a Samsung device due to Samsung appearance.

Q And it doesn't tell you whether a purchaser bought a Samsung device over a—over an iPhone

because Samsung had three of hundreds of features that the iPhone also has?

A This is not a survey of Samsung customers.

Q Now, and in your own surveys, you ask about a number of features; this something that's very important, you had those top two categories. Do you remember?

A We ask about a number of features and the importance into the buying decision.

[700] Q And when you asked them and looked at those relatively, though, ease of use, everyone for iPhone customers compared to others, you found that the, the—I'm sorry—that the design was ranked relatively lower compared to the other questions you asked?

A It was lower than some and higher than others.

Q So if you look at 143.22, for example, that's a page—

and I move that into evidence, your Honor.

* * *

THE COURT: It's admitted.

(Whereupon, defendant's Exhibit number 143.22 having been previously marked for identification, was admitted into evidence.)

[701] BY MR PRICE:

Q And when you looked at all of this, you found that the importance of attractive appearance and design is rated relatively lower than the other questions you asked?

A Again, not apparently you will the other questions. Just some.

Q What questions?

A Specifically, ease of use rated higher than appearance.

Q Others?

A There looks like—I would have to take a minute to look through.

Q Like multitasking, price, ability to download apps?

A Well, it depends on country by country. It varies. But those are sometimes rated higher.

Q And actually on ease of use, if you look at—if you—let me back up here.

Looking on the design, you also subscribe and pay for a survey done by a company called Com-Tech?

A I'm familiar with that.

* * *

[Re-Direct Examination of Philip Schiller]

[720] there an overlap or a connection between the design of the Apple phones and the Apple brand?

A Yes, I think there's a strong correlation

Q And what is that correlation?

A It is that people associate the Apple brand with great design, and they have intrinsic meaning together.

Q Sir, again, I think you testified that you were involved in the original iPhone product, is that correct?

A Yes.

Q And we've talked a lot about what the iPhone looks like and the design and the elements of that design; is that correct?

A Yes.

Q Was that design chosen so that it wouldn't match on somebody's pocket?

A No.

Q What was the theme of the overall design of the iPhone?

A We were trying to create a new breakthrough design for a phone that was beautiful and simple and easy to use and created a beautiful, smooth surface that had a touchscreen and went right to the rim with the bezel around it and looking for a [721] look that we found was beautiful and easy to use and appealing.

We had a term at Apple, in marketing, that we called the lust factor. Does this iPhone have appeal to people that they lust after it because it's so gorgeous. That's one of the things we were going for, a high lust factor.

Q During the four years that the iPhone was under development, were other designs considered at any times?

A Yes, there were many designs.

Q Would those other designs have cut on people's pockets.

A I don't believe so.

* * *

[742] And there was a hardware team, there was an industrial design team. So there were many teams and I was responsible for building the software team.

Q How did you go about recruiting the team that you used for the iPhone project?

A So this was—this was a real challenge. Steve gave me a, a difficult constraint, and that constraints was he didn't want, for secrecy reasons, for me to hire anyone outside of Apple to work on the user interface, meaning anything you were going to see on the screen, he didn't want me to hire anyone from outside of Apple to work on that So I had to find people from within Apple to work on that.

But he told me I could hire anyone in the company, I could move anyone in the company into this team to build the iPhone team.

And that was quite a challenge. The way I did it is I would, I would find people who were true superstars at the company, just amazing engineers, and I would bring them to my office and I would sit them down and I would say, "You are a superstar in your current role. Your manager loves [743] you. You're going to be incredibly successful at Apple if you just stay in your current role and keep on doing what you want to do.

"I have another offer for you, another option. We're starting a new project. It's so secret, I can even tell you what that new project is I cannot tell you who you will work for.

"What I can tell you is if you chose to accept this role, you're going to work harder than you ever have in your entire life. You're going to have to give up nights and weekends probably for a couple years as we make this product."

And amazingly, some tremendously talented people accepted that challenge and that's how I put together the iPhone team.

Q Why was this project so super secret?

A We—we wanted to build a phone for ourselves. We wanted to build a phone that we loved, that really was, you know, a computer in your pocket in some ways.

You know, it was the entire internet. It was an iPod, so it had music.

We wanted something that really, you know, was a great phone.

And we wanted to do it from whole cloth. [744] We wanted to figure out how to build something great without anyone else finding out what we were doing and leaking it.

So we tried keeping it incredibly secret so it would not leak out before we announced it.

Q At the beginning of the project, were you confident that you could do this, develop a new phone?

A Not at all.

Q Were there—if you had not succeeded—

Let's change history and go back to the person who didn't cross the street and all of history changes. If you had not succeeded, would there have been negative consequences for Apple?

A Absolutely.

Q For example?

A We were taking many of the key people at the company and moving them on to this project. We actually moved out other releases of our products because of the people that we took off those projects and put on to this.

And so had it not succeeded, not only would we have had the detriment of the lack of those products shipping, we wouldn't have had something else to fill in at the same time.

[745] And had we not succeeded, some of these great people would have burned out and probably left.

Q Where did this development project take place physically?

A We took a—one of the buildings we have up in Cupertino and we, we locked it down. We started with one floor. We locked the entire floor down. We put doors with badge readers, there were cameras, I think to get to some of our labs, you had to badge in four times to get there.

And at the time, we called projects by code names. They were colors. The original iPhone was called the purple project.

And so I referred to this, this building as the purple dorm because—

Q Where did that name come from?

A Well, very much like a dorm, people were there all the time. They were there at night. They were there on weekends. You know, it smelled something like pizza.

And, in fact, on the front door of the purple dorm, we put a sign up that said "fight club" because the first rule of fight club in the movie is you don't talk about fight club, and the [746] first rule about the purple project is you do not talk about that outside of those doors.

Q The people on the software—so you're doing the software and the user interface.

What hardware were you using during the development phase?

A As we were building the software, the hardware team was moving equally fast to build a whole set of incredible hardware, and as they would build something, they would give it to us; we would immediately put our software on top of that, find any issues, find things that had been fixed, give feedback, and then they would iterate.

And the key really was the touchscreen display. And that was a huge challenge.

Q And what kind of touchscreen? What were you using for a touchscreen?

A When we started the project, most touchscreens out there that people had in their devices were called resistive touch, and what that means is when you take your finger and you press down on the screen, it actually deforms the screen and changes the resistance so that the screen can tell that you're physically touching it

But this had two pretty large problems in [747] our eyes. One is it physically deforms the screen, so if you're looking at an image or a list of music on the screen, you see this warping of the text or the image. And so we didn't like the warping part.

The second is when you move your finger along, you have to press pretty hard, so your finger starts to fatigue over time as you're trying to scroll. And we were trying to create this illusion that you're literally touching the content and moving it with your finger, and you should be able to touch it really lightly.

So the hardware team set out to build something called capacitive touch, and capacitive touch allows

you to get your finger very close or even lightly touch the screen, it changes the capacitance and notices your finger there.

So the hardware team was building these early prototypes and later prototypes of a capacitive touch screen and we were taking advantage of that with our software.

Q Now, you've done operating systems and user interfaces for both computers and phones, and I want to ask you, what unique challenges were you facing to try to do this operating system, and the user interface particularly, on a small [748] touchscreen?

A There were a number of challenges. One of them was everything we dealt with before was based on a mouse and a keyboard, and here we were changing the entire user interface to be based around touch.

So we had to rethink everything about how big controls should be, what should happen when you touch, how do you scroll, how do you know where you are in a document, how do you know if you're at the end of a list or the end of a document?

Every single part of the entire device had to be rethought for doing touch. So we started with a brand new U/I, a brand new user interface, instead of something that was existing. So that's one.

Second is we didn't want to have a physical keyboard on here. I mean, if you look back to, you know, even 2005 when the engineering team started on this, smartphones all had physical keyboards You know, the most popular at the time probably was a BlackBerry and it had a physical keyboard.

And many people thought we were actually crazy to try to build something without any form of [749] physical keyboard, not a slide out one, not one on the front screen, nothing.

And so that was, in large part, a science project for us to be able to create a, an on screen touch keyboard that could work really well and then get out of the way when you weren't using it.

And then when you switched to a different language, you could add different keys.

So there's lots of advantages. But it was really difficult.

One other one was we wanted to give people the entire web, the entire internet experience, and the internet is designed for a much larger screen. When a web developer is building a site for the internet, they design it expecting a window like this on a computer.

And, yet, we have this very, you know, compared to that, small window, small screen, into that web world.

So we wanted to solve the problem of giving people the entire real internet on this device.

* * *

[751] capture the amount of the investment that went into creating these user interface features that you're talking about?

* * *

THE WITNESS: The investment in building a user interface that could work on this size device with your fingers and touch was immense. I know I personally dedicated years of my life to this, as did hundreds of people on this team.

And it was very, very difficult.

BY MR. MCELHINNY

Q Sir, if you would open your binder, please, to Exhibit 163. I'm sorry, Exhibit 1046. What is Exhibit 1046, sir?

A It is U S. Patent 7,864,163.

Q And are you one of the named inventors on this patent?

A I am.

///

* * *

[760] CROSS-EXAMINATION

BY MR. JOHNSON:

Q Good afternoon, Mr. Forstall.

A Good afternoon.

Q My name is Kevin Johnson. We've seen each other before; right?

A Several depositions

Q Okay.

So if I may approach, Your Honor, we're going to hand out some binders

(pause in proceedings.)

MR. JOHNSON. I think I'm just going to refer to the last one.

Q Now, the original iPhone was introduced, Mr. Forstall, in January 2007; right?

A Correct.

Q And let's go back a little bit further and talk about the development of the iPhone.

In 2006, your team was concerned that the speed of the processor that was going to be used in the iPhone was too slow compared to the speed of the processors used in other smartphones, including Samsung's smartphones; right?

A I had concerns that I wanted it to be as fast as possible, yes.

[761] Q. And in fact, you looked at what Samsung's phone did and what kind of processor it had; right? Do you remember doing that?

A Yes.

Q Okay. And the idea there was that, by looking at what your competitors were doing, potentially, that was okay; right?

A Yes.

Q Now, there were other instances when executives at Apple looked at what competitors were doing during the development of the iPhone; right?

A Yes.

Q And there were other examples when Apple executives looked specifically at what Samsung was doing in development of the iPhone; right? During the development of the iPhone?

A Yes.

* * *

[Re-Direct Examination of Scott Forstall]

[785] You mentioned on your cross-examination that there's nothing wrong with benchmarking.

A Correct.

Q Is there a point where benchmarking becomes something that you do think is inappropriate?

* * *

THE WITNESS: Absolutely. It's fine to benchmark, you know, for performance reasons.

[786] It's not okay when you then go and copy and rip something off. So there's a very, you know, strong distinction between benchmarking and copying

BY MR. MCELHINNY:

Q In the IOS area, are we going to see any documents in this case with side-by-side comparisons between Apple and Samsung products where you or any other manager at Samsung—at Apple have directed your people to copy a Samsung phone?

* * *

THE WITNESS: I never directed anyone to go and copy anything from Samsung.

BY MR. MCELHINNY:

Q Why not?

A We wanted to build something great and we thought we could build something better than anyone else had ever built on this. So there was no reason to look at what they did.

* * *

[Direct Examination of Justin Denison]

[866] BY MR. QUINN.

Q How long have you been in the mobile telecommunications industry and related industries?

A I've been in and around it for about 16 years now.

Q How long have you worked for STA, Samsung [867] America?

A Just over four years.

Q And prior to that, did you work for any other Telecommunications companies?

A I worked for Nokia Corporation prior to Samsung.

Q Have you done work—have you had any other employment in the telecommunications related field?

A Sure. I worked on the chip side at Texas instruments in their mobile business; and then before that, I worked for many years at Motorola in their handset and chip businesses.

Q All right So based on your industry experience, what is your understanding as to why there are rounded corners on these phones?

A Well, my simple understanding is that it's really for several reasons. One, it feels better in the hand Pointy corners certainly create stress on your hand.

It's more difficult to actually put a device in your pocket if it has sharp corners when you're trying to put it in your pocket, and pocketability is an important aspect of mobile devices.

It also affects durability. So if you [868] were to drop a device and it were to land on a sharp corner, it would be much more likely to crack than it would be if it were rounded, let's say.

Q Do you have a technical background yourself, sir, in terms of your education?

A My education originally was in engineering.

Q Could you please tell the jury what education you have?

A So I have a bachelor's of science in computer and electrical engineering from Rice University; a master's of science and engineering from The University of Texas at Austin; and then i have a master's in business administration from North Western University.

Q We've heard testimony about these phones having flat screens. Based upon your industry experience, do you have an understanding about why these phones have flat screens?

A I do.

Q And what is that?

A Well, first, since we investigated, we developed one phone that had a curved screen and one of the key issues of it is it manufacturability and cost.

To actually create a curved glass front, [869] let's say, you have to start with a big piece of glass and carve it down to create a curved portion of glass, and that costs more money. You start with more material and actually use—it results in lower yield.

In addition to that, you had problems with regards to the touch sensitivity of a curved glass front. So the actual increased thickness of the display at the edges, that's how it was shaped, interfered with the touch sensitivity of the display in those areas and introduced some, you know, visual defects, let's say, of the underlying screen underneath.

Q All right. Does—you know, does having a screen that is not flat have any optical effects in terms of the effect on the image?

A Yes. I tried to talk about that in my answer. It does create some distortion, if you will. I think it's due to refraction through the glass as the image comes out.

Q We've heard that the screens on these phones tend to be more or less kind of centered on the device. Do you have any understanding about why that's the case?

[870] A I do.

Q What is that?

A It simply—again, they're main components in a phone, and they're not all put behind the glass, if you will, behind the display for many reasons.

So you have to put them on the top and/or on the bottom of the display, which, of course, means that there has to be space above and below this way.

For instance, the speaker typically is above the display. The microphone is typically below the display.

There's keys, whether they're hard keys or capacitive keys, that are below the display, for instance.

And there's many other I/C components that you either would choose not to put behind the display or you necessarily have to put above or below just for reasons of even device thinness.

Q We've heard some testimony about the location of the speaker up near the top. Do you have any understanding about why speakers tend to be put at the top of the device?

A It's just closer to the ear that way.

Q And then we've heard about this, the spacing, you know, the metal or plastic along the side of [871]

the screen. Is there a term for that that's used in the business?

A The term I've heard is called the Black Mask.

Q And that's—where is that on the phone?

A That is kind of, as you were gesturing, along the sides of the screen, let's say, in between what you would see as the edge of the screen to the edge of the sort of outer edge of either the bezel, if there's a bezel, or the frame if there's a unibody frame, for instance.

Q Is there a reason why these phones all tend to have these black masks on either side of the screen?

A There is.

Q And what is that?

A Again, in my experience in the industry, actually people have tried to get rid of that, you know, because you actually want—you really do just want the device to be just one giant screen That's what we think consumers ultimately will want

But you have to have that for manufacturability reasons, as well as quality reasons. So manufacturability because you actually—there's nothing to hold the glass, per [872] se, on top of the device

And so what ends up happening is you actually glue or tape the actual glass using those thin borders on top of the actual underlying display, because there's a piece of glass and then underneath that is a display and you have to glue that on top.

Manufacturability—or I'm sorry. Quality reasons because if you were to drop a phone on its side, let's say, and there were no, you know, distance let's say, or nothing between the edge of the display and the edge

of the phone, there would be a very significant impact on the displays.

Displays can be fragile. They're extremely expensive to replace. They're one of the most expensive components on the device.

So that's why that exists.

Q Now, we've heard testimony about how these screens on smartphones have gotten larger and tend to be rectangular and tend to take up most of the real estate on the surface of the phone.

Do you have an understanding about why that's happening?

A Yes, I do.

[873] Q Why is that?

A Well, two parts. So the screens are rectangular because they're rectangular. That's how we developed technology. TV's are rectangular. So that's kind of appearance.

In terms of why the screen takes up the majority of the device, again, it goes to this design ideal, what we think consumers want at the end of the day, what I would want as a consumer, which is a giant screen, the giant window into my content and to my, you know, mobile web environment, things like that.

Q And I think you may have suggested this, but does that have something to do with being able to see movies better, photographs better, things like that?

A Yes, it does

Q And so these various features that you've talked about, did these tend to become common across most all smartphones?

A I would say that as the technology becomes available to do these things, that's when you see people introducing it into the market, yes

* * *

[878] Q But you said that Samsung's strategy is to beat Apple, beat HTC, beat, you know, all your competitors, to be number one

You're the head strategy guy at Samsung. Can you explain to us, in general, what is Samsung's strategy for becoming number one?

A Samsung's strategy to become number one is based on I guess what I would summarize as a recipe for our sustainable advantage in the market. The—

Q What's a sustainable advantage?

A So any time you're charting a strategy, let's say for a company or entity, I guess when you're someone like me thinking about the strategy, what you're trying to find is you're trying to find some unique capabilities and competencies that your company has that they can leverage that your competitors may not have. So assets, let's say that you can develop, incubate and leverage as a win.

And that's what we do at Samsung.

Q And based on your experience and your background, can you obtain a competitive advantage just by copying what somebody else does in the [879] market?

A No. That would not represent a sustainable advantage.

Q How is it that Samsung goes about trying to maintain a competitive advantage?

A Samsung's strategy, I guess in short, is to deliver the latest and greatest technology to consumers, more frequently than the competition, at as many points of distribution as possible—again, the carrier is an example of distribution point—leveraging multiple underlying technologies, including multiple operating systems, and at as many different price points as possible, i.e., premium, high price points, as well as lower end price points so that our devices are as accessible as possible to all consumers when they want to purchase.

Sometimes we refer to that as the democratization of the cell phone.

Q And how is that strategy that you've just described different from Apple's strategy in terms of the products it brings to market?

MR. LEE: I object. No foundation for him to know what Apple's strategy is.

MR. QUINN: Based on his competitive—[880] his job. I can lay some foundation, your Honor.

THE COURT: Please do that

MR. QUINN: All right.

Q In your job, are you required to understand what Apple's product strategy is in terms of what products it's bringing to market?

A We absolutely try to understand what our competitors are going to bring to market.

Q Would that include Apple?

A Yes.

Q HTC and all the others?

A Yes.

Q Okay. Based on what you see in terms of the products Apple brings to market, what is your understanding about what Apple's strategy is?

A Well, from my view, Apple is launching, or has been launching, the products at about one smartphone a year, okay, and they have charted a very specific path, Starting in 2007, whereby they launched that with one particular carrier on an exclusive basis.

They've continued to launch an undated product every subsequent year, as well as started to slowly expand their distribution to more carriers

[881] Q Well, so Apple, based on your observation, brings out roughly one new phone a year. Approximately how many new phones does Samsung bring out every year?

A We launch approximately 50-ish devices a year. I think in 2011, it was a little bit more than 50 devices.

Q And why is—why does Samsung do that, bring out so many different phones?

A In part it goes to what I described as our desire to bring out the latest technology when it's available, more frequently than the competition.

It also has to do with some of the uniqueness that we chose to bring to the carriers in terms of the portfolio.

Q Does Samsung invest in its brand and its name, Samsung?

A We invest quite a bit in the U.S. on behalf of Samsung.

Q Do you know how much Samsung invested in its brand?

A Samsung, STA I should say specifically, has invested, let's say, about a billion dollars last year, 2011, on marketing their brand.

Q In the U.S.?

[882] A In the U.S.

Q That was one billion with a "b"?

A Yes, it was.

Q All right. Does—is Samsung proud of its name?

A Absolutely.

Q Does Samsung put its name on its products?

A It's on every product.

Q Was there a time period where there was a tablet that Samsung brought where the name wasn't on the front, it was on the back?

A There was, yes.

Q And can you explain why that was?

A So that—I believe you're referring to the original Galaxy tab 10 1.

Q You tell me

A Okay. That's the way I remember it, anyway.

So we did not originally put the Samsung brand on the facade, the front face of that product, because the process by which you, I guess you etch, I think it's some kind of laser etching, you etch the actual brand into the display was causing the glass to interfere with the actual, you know, kind of hidden wires, if you will, for the touch sensitivity on the display. So it was [883] creating manufacturing problems in short.

Q And were those fixed?

A They were.

Q And after that, was the Samsung name put on the front?

A It was.

Q Let's turn now to research and development. Does—do you know how much Samsung spent on research and development between 2005 and 2010?

A Samsung spent, and this is sec, so Samsung Electronics Corp., spent approximately $35 billion over the course of those years on research and development.

Q And do you know how many engineers are employed at Samsung?

A There's approximately—I think there's more than 50,000. I'll just say approximately 50,000 engineers globally.

Q And how many of those work in research and development?

A Oh, I would say they all work in research and development

Q And do you know how many designers are employed at Samsung?

[884] A I believe there's upwards of 1,200 designers at Samsung.

Q Does Samsung make that investment in marketing and research and development and employ those designers and employ those engineers all so it will be easier to copy its competitors?

A No.

MR. LEE: Well—

BY MR. QUINN:

Q Do you know where Samsung ranks annually in the U.S. in terms of patents issued by the United States patent and trademark office?

A I do.

MR. LEE: That's irrelevant.

THE COURT: overruled. Go ahead, please.

BY MR. QUINN:

Q Where does Samsung rank?

A Samsung has been ranked number two patent awardee in the United States every year since I've been at Samsung.

Q So—and that would be? Remind us what year it was.

A I started at Samsung in 2008.

Q And has—you know, in your work at Samsung, [885] and indeed working for competitors before, did you become—did you come to learn about innovations that Samsung brought to, to mobile telecommunications, you know, firsts, things that Samsung did first in the industry?

A Sure I did.

Q And can you tell the jury what some of those are?

A Certainly. For instance, Samsung—and this was when I was, as you said, at other competitors, but I saw that from a competitor's point of view—Samsung launched the first MP3 phone in approximately the year 2000, as I recall.

Samsung launched the first device to be sub-ten millimeters thick. Okay, that's kind of an important

milestone, let's say I think some people called it the first wave of ultrathin devices in the market That was around 2001, I believe.

Samsung was the first company to launch a device with voice recognition. That, I believe, was in 2007 if I'm not mistaken.

Samsung also launched the first camera phone globally. That was done around the year 2001.

[886] And then more recently, Samsung was also the first manufacturer to launch devices with the super AMOLED, a-m-o-l-e-d, super AMOLED technology with the first family of Galaxy s devices, and that was in 2010.

Q What is AMOLED technology?

A AMOLED technology, I think it stands for active matrix organic light emitting diode, something to that effect.

It's a type of screen technology that Samsung has developed and employed in its own products and it, simply speaking, allows for a much faster response time.

So images can appear with less blur. It allows for more contrast in brightness.

And it also allows for better thinness of the device because the original super AMOLED technology included the—this was, i guess, a breakthrough of sorts. It took the touch sensitivity of a display, which is normally separate from the actual display in past phones, and actually combined the two.

So it essentially eliminated a layer of display so it allowed phones to be thinner because the displays were thinner.

[887] Q Let's—we've heard some testimony from Apple's point of view about advertising and marketing of Apple products.

Are you familiar with how STA advertises and markets from a strategic Standpoint, promotes its products in the United States?

A Yes, generally speaking, I am.

Q And what is Samsung's strategy in terms of advertising its products?

A Well, really all we're trying to point out to consumers is I guess what you would call a brand promise or a brand message, and it's tied back to that strategy I talked to you about.

So it only works when everything is linked together. So we try and show consumers in our advertising that we've brought them the latest and greatest technology, that we're bringing it to them faster than the competition, that you can count on Samsung to do that continuously. You can trust us

Q For different products, does Samsung have, you know, different launch messages that they associate with those products?

A At times we'll tweak the launch message depending on the product, yes.

[888] Q Can you give the jury an example of that?

A For instance, for the Galaxy S 2 launch in the United States, I think the tag line was something like "the next big thing."

Q I mean, does—does Samsung ever seek to sell its products by causing consumers to be confused into thinking that, you know, you're—you think you're

buying an Apple product but you're actually getting a Samsung product?

A No. We want consumers to hear our message, understand that our message is ours, and go out and buy our device.

* * *

[897] Know what that is on the left-hand side?

A That is an Apple retail store.

Q And then in the middle, what is that picture?

A As it's labeled and as I'll describe, it's what we call a store in a store. So it's actually—it's actually a small piece of real estate, if you will, inside a store that is distinctly Apple.

Q Okay. And when you told us earlier that Apple products are always segregated in stores, is this an example of that?

A That is one example of it, yes.

Q If you go to a, an AT&T store, is a consumer likely to encounter a Galaxy S 2 phone side-by-side with an iPhone?

A You certainly will not encounter any Galaxy phones on the Apple display.

Q In terms of—are there some carriers, each—for example, would it be true to say at a T-Mobile store, you're not going to find any AT&T phones?

A That's right.

Q Does T-Mobile sell the iPhone?

A T-Mobile does not sell the iPhone.

Q Ever?

[898] A They have not ever sold the iPhone.

Q So would a consumer ever encounter a Samsung phone for sale in the same store as an iPhone in a T-Mobile store?

A They would not.

Q Does Sprint carry the iPhone?

A They do.

Q And for how long has Sprint carried the iPhone?

A Since I think it was October of last year.

Q And how about Verizon?

A Verizon has carried it since, I believe, February of last year.

Q So before those dates when those carriers started carrying the iPhone, consumers who wanted to use those carriers, would they have been able to buy an iPhone there?

A Yes.

Q Before those dates?

A Oh, no, I'm sorry. Not before those dates, no.

Q I mean, do you have any information about how, you know, what consumers do or—let me ask it this way.

As the chief strategy officer, is it [899] important for you to understand how a consumer goes about making a decision to buy a smartphone?

A Sure, yes.

Q And is that something that you've studied and collected information on?

A Yes.

Q Is the decision—based on what you've learned, is the decision to make an investment in buying a phone, is that typically something that's done, you know, on the spur of the moment? Or without a lot of study and assessment?

A No. In fact, we find consumers do a considerable amount of studying They take a considerable amount of time, actually, to make their phone choice.

Q Do you have any information about how much time, in average, a consumer spends in deciding what type of phone to purchase?

A We find the average consumer takes approximately six weeks, about one and a half months, to make their phone purchase decision.

[900] Q Well, I mean, have you personally heard of instances where consumers bought a, a Samsung phone thinking it was an iPhone, an Apple product?

A I'm not aware of any examples of that.

* * *

[931] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. C-11-01846 LHK

APPLE INC., a California Corporation,
Plaintiff,

vs.

SAMSUNG ELECTRONICS CO., LTD., a Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,
Defendants.

San Jose, California
August 6, 2012

Transcript of Proceedings before the Honorable
LUCY H. KOH United States District Judge

Volume 4
Pages 931-1296

Appearances on next page

Official court reporter: Lee-Anne Shortridge, CSR, CRR certificate number 9595
Irene Rodriguez, CSR, CRR certificate number 8074

* * *

[946] Justin Denison, Being called as an adverse witness on behalf of the plaintiff, having been previously sworn, was further examined and testified as follows: Go ahead, please It's 9:00 a.m.

MR. QUINN. Thank you, your Honor.

As-on direct examination

BY MR. QUINN:

Q Good morning, ladies and gentlemen. Mr. Denison.

A Good morning.

Q Last friday you told us that in any given year, Samsung introduces about 50 new phones in the United States; is that correct?

A That's about right, yes.

Q Can you tell us, at any given time, approximately how many phones, including models that aren't introduced that year, Samsung has for sale in the United States?

A I would just estimate, again, it could be as many as 100 that are in the market at any given time let's say.

* * *

[951] MR. QUINN: So these two phones, Exhibit 1027, the Infuse 4G and the Galaxy Vibrant, Exhibit 1010, are being passed to the jury.

Q Now, Samsung sells other Galaxy S phones to other carriers?

A That's right.

Q And if we could look at the Exhibit 1011, the Captivate; Exhibit 1013, the Fascinate; Exhibit 1012, the Epic 4G; and the Galaxy S 4G.

Do you have all four of those? We're still fishing one out.

A Yes, I have them all.

Q Now, why does Samsung sell different Galaxy phones to each of the different carriers?

A Well, generally speaking, the carriers themselves want to differentiate the portfolios they offer of both devices, as well as services, from each other.

So they typically ask us for some element of uniqueness in even the physical design of the products that they sell versus their competition. Hence all the Galaxy S I devices looked distinctly different.

Q And does Samsung work with the different [952] carriers to come up with differences for the different Galaxy phones?

A Yes, yes, absolutely.

* * *

[955] BY MR. QUINN:

Q Did the screens get larger as the generations of Galaxy phones went on?

A They did, as well the screen technology itself advanced.

Q Can you tell us whether or not that was kind of a trend in the industry, that screens would get larger on smartphones?

A It definitely has been from Samsung's perspective.

Q And were additional features added over time over the different generations of Galaxy phones?

A Yes.

[956] Q And can you tell us whether or not, as the—a there were new generations of Galaxy phones and the screens got larger and new features were added, were the phones more successful than the previous generations?

A Yes, they absolutely were

* * *

[973] Q All right. We've heard testimony thus far from Apple witnesses that they believe that Samsung ripped off Apple and that they were outraged by it, that they felt outraged.

And let me just ask you, what is your reaction to being accused of ripping off Apple?

A I find it very offensive.

At Samsung, we're very, very proud of the [974] products we produce, of all the hard work that goes into bringing those products to market.

We've been in the mobile business for 20 years globally, just over 20 years. We've been in the mobile business in the United States 15 years.

And the last four years, we've been number one in the U.S. Market.

What we would—what we would like to—what we would like to be able to do is simply just compete in the market, just continue what we've been doing for the

last 15 years in the U.S. Market and continue to try and deliver the best products with the latest technology more quickly than our competitors do as many carriers as possible within reach of as many consumers as possible. That's simply what we'd like to do.

Q Are there some cell phone features that Samsung has added to its phones before Apple did and then Apple later on added those features to its phones?

A Yes.

Q And could you name what some of those are, please?

A Well, one, for instance, is voice, voice recognition, voice command capabilities. We had [975] that in our phones prior to Apple.

One is advanced screen technology. We launched super AMOLED and then later on Apple launched another advanced screen technology following us

We launched the first cloud-based music—or cloud-based video service in the U.S. And did that prior to Apple.

Q And then when Apple later offered those features in its phones, did you feel like they'd ripped you off?

A No, not really.

Q Were you outraged?

A No, I wasn't.

Q If Apple comes out, say, in the iPhone 5 with a screen that's bigger than the existing screen, that's more like the size of the Galaxy 2 screen, are you going to regard that as copying?

A No.

* * *

[Re-Direct Examination of Justin Denison]

[997] BY MR. QUINN:

Q The Omnia, what was the operating system on the Omnia?

A That was Windows Mobile separating system.

Q So that wasn't an Android operating system?

A It was not.

Q And after that, did Samsung come up with Smartphones that were powered by Android operating systems?

[998] A Yes.

Q And did, in fact, Samsung notice the iPhone from your perspective at least, Samsung America, did people notice the iPhone?

A Sure.

Q And did they notice it was successful?

A Sure.

Q Can you tell us whether or not people at Samsung felt challenged by the success of the iPhone?

A Yes, absolutely.

Q If we could look at that last exhibit that counsel was showing you, if we could look at the pages ending in 7377, that same e-mail. And up at the top, if we could enlarge those first couple of lines there, the author says, "I have confidence in our products' h/w."

What does h/w mean to you?

A Hardware, and more specifically in this context, it says exterior design afterwards.

Q "In their exterior design," right?

A Yes.

Q This is the same person that Mr. Lee is quoting?

A Yes, I believe so.

[999] Q "And in their quality. But when it comes to the ease of use of our UX, I lack such confidence." now, what is the UX?

A I believe that's the user experience.

Q And then if we go down blow about two-thirds of the way down, there's a sentence that begins, "our most important asset is our screen," and it goes on to say, "it's very important that we make screen size bigger and in the future mobile phones will absorb even the function of e-books."

Did, in fact, Samsung go ahead and bring to market smartphones where the screens were bigger?

A Yes.

Q Bigger than the iPhone screens?

A Yes.

* * *

[Direct Examination of Peter Bressler]

[1008] Q Let's turn to the work you did in this case, Mr. Bressler.

Did you conduct analysis for this case to determine whether or not certain Samsung products infringed one of the Apple design patents in the case, the D'677, the D'087 or the D'889?

A I did.

Q And have you formed any opinions about that topic?

A Yes. It is my opinion that there are a number of Samsung phones and two Samsung tablets that are substantially the same as the designs in those patents.

* * *

[1014]

Q Okay. Using these eight figures of the '677 patent, can you walk the jury through the design that is claimed by these pictures?

A Yes. Perhaps since it was just discussed, you can see from the shading that what's being claimed in this design is the front face of an electronic device that is black in color.

If you notice the diagonal lines, or diagonal hatching that runs from one corner to the other, or all the way across the front face, those are a convention for indicating that it's reflective or transparent or translucent.

And in this particular case, I see that it's transparent because you can see at a rectangular, or what we're presuming to be a display area that is centered in that rectangular field that's defined that it goes end to end across the face as transparent.

Q And what figure are we looking at here, Mr. Bressler?

A I'm sorry. We are—I tend to talk off of Figure 1 because to me, all of the elements are seen in there

But for referencing the things I'm [1015] saying, you could also look at Figure 3 that shows it on a straight on view.

But you shouldn't not look at the other views because, for instance, Figure 5 and 8 and 7 and 6 show the side and end views, and because there is a single, solid line there, those are indicating that all it's claiming is that front face. Okay.

And the other convention is that the broken lines, or what you might call dotted lines, that are showing other illustrated portions are illustrating portions of what might be a design but are not being claimed in this patent.

So the only thing being claimed is the area in the solid lines.

A couple other details that I wanted to point out, which you can see both in Figure 3 and Figure 1.

As I mentioned, there is this rectangular, I think I mentioned, there's a rectangular display area centered in the device that has lateral borders on either side that are thin on the side and then they're wider on the top and bottom, and there is a lozenge shaped ear slot, basically, or receiver slot in the upper border [1016] area.

And the dotted lines are even a little bit on the face there where they're defining an area that's not being claimed.

So when you look at this face, it doesn't matter to you what is in that space because nothing is being claimed there.

Q And are you referring there to the white circle inside the dotted lines?

A Yes.

Q Okay What do these figures tell you about the shape of the front face of the device that's claimed?

A It's indicating that the shape of the front face of this device is a very specific rectangular proportion as indicated on the drawings, as you can see perhaps in Figure 3, the length and width proportion in comparison to the curves on the corners, that's to provide a very specific impression or design.

Q Now, I'd like you to turn to the '087 patent, that is Exhibit JX 1041 in your binder.

And for the record, I think this is already admitted, your Honor.

Could you look at the '087 patent? And [1017] looking specifically at the first printed page, tell the jury when this patent was issued and when it was first applied for.

A This patent was issued on May 26th, 2009. And it was first applied for in the parens 63 on January 5th, 2007.

Q Okay. Could you turn to the next page and to the section headed claim. And tell the jury what is the design that is claimed in the '087 patent?

A Again, there is a single claim in the patent, which is "the ornamental design of an electronic device substantially as shown and described," and then there's the list of figures or drawings that you're going to see in the rest of the patent.

Q Now, in this patent, there's a much longer list of drawings, right.

A Yes.

Q There's not—instead of eight, there are 48?

A Correct.

Q Can you explain to us why there are 48 drawings rather than 8 drawings in this patent?

A This patent covers seven different versions, or combinations of elements, of different designs which are called embodiments, and all of those embodiments are covered by the patent, but they're [1018] covered separately.

Q And each of them has eight drawings?

A I'm sorry. Each of them has eight drawings, Figures 1 through 8, then Figures 9 through 16, et cetera, for six different versions.

Q So 6 times 8 is 48?

A Yes.

Q So 48 figures is 6 embodiments?

A Correct.

Q Okay. Could we look at the second embodiment?

And, Thomas, if you could put up on the screen side by side the pages that show the eight figures for the second embodiment, which is Figures 9 through 16.

And you'll find those in your binder as well, Mr. Bressler?

A Yes, I have them.

Q So could we see the actual figures.

Great.

Using the drawings that are incorporated into the claims of the '087 patent, could you walk the jury through the design that is claimed by these figures?

A Yes.

This design is claiming the front face, [1019] the flat front face and the bezel of an electronic device. As you can see by the broken lines, again, it's not claiming the body. It's claiming the bezel and the front face.

That front face is a rectangular design with rounded corners in the proportions and the scale, length to width and proportional ratios that are being shown here in the drawing.

And it includes a rectangular display, as did the other patent, with narrow borders on either side and wider borders top and bottom.

And it shows that rectangular front face area as not having any specification. It doesn't have diagonal cross action, it doesn't have sheeting. So that flat front surface could be any color. It could be transparent. It could be anything. Nothing is being specified.

The other part of it to notice is in the side views that, again, this is specifying a front face and bezel that are absolutely flat.

* * *

[1049]

BY MS. KREVANS:

Q Okay. Also on the table in front of you should be exhibit JX 1019, which should be the Galaxy S 4G.

A Yes.

Q Do you have that, Mr. Bressler?

A I do.

Q Is this one of the Samsung phones that you analyzed?

A It is.

Q And what conclusion did you come to about whether the Galaxy S 4G infringed either the D'677 or D'087 patent?

A It's my opinion that this phone, the design of this phone would be considered substantially the same as the design of the '087 and '677 patents by an ordinary observer

Q So this is a phone that you found infringing?

A I found it infringing, yes.

* * *

[1090] Did you perform an analysis of whether the appearance of any element in the design of the three Apple design patents that you analyzed was dictated by function?

A I did.

Q And did you, as a result of that analysis, conclude that any of the visual elements of the Apple design patents were, in fact, dictated by function?

A I concluded they—none of the elements were dictated by function.

Q Why did you conclude that none of the elements of the Apple design patents were dictated by function?

[1091] A For a couple of reasons. One, in my experience, I know full well that virtually every

function that's included can be designed with a different appearance.

Secondly, I reviewed and identified a number of different alternative designs that performed the same or similar functions to those that were in the patents.

* * *

[Cross Examination of Peter Bressler]

[1110] Q Okay. Now, let's go to JX 1041 and let's display Figure 43. Let's just highlight, pull this out.

This is the '087 design patent, front view; correct?

A That is a view of it, yes.

Q That's the front view; right?

A Yes, of one of the versions.

Q Okay. So I'm going to ask—I'm going to ask you some questions about this '087 design patent.

Are you with me?

A I am.

Q So taking your principle where you look at the prior art in connection with your infringement analysis, let's look at the prior art.

Let's go to DX 511. And this is a piece of prior art that you reviewed; correct?

A It is.

[1111] Q And if we can go to page 3 and pull out the top image? Do you see that, sir?

A I do.

Q And can we put this next to the '087, Figure 43.

So you would agree with me that the prior art here is rectangular?

A Yes.

Q With rounded corners?

A Yes.

Q You would agree with me that it has a lozenge shaped spot here for a speaker?

A Yes.

Q You would agree with me that this has got a large display screen?

A Yes.

Q And you would agree with me that that display screen is balanced vertically and horizontally within the design?

A Yes, though I believe this is an inappropriate comparison in analyzing a design patent.

Q This is prior art; right?

A Yes.

Q And so it's appropriate to look at prior art when you're conducting the infringement analysis; [1112] right?

A My understanding of the rule is you're to compare all figures of the patent, all the—

Q Okay. This is one figure—is this one figure?

A It is one figure, yes

Q Okay So it's okay to compare this; right?

A If you wish.

Q Okay. And it's got a very narrow lateral border to the screen? Do you see that?

A I do.

Q And a thicker top and bottom border of the screen?

A Yes.

Q And it's got some sort of thing that looks like a bezel going around it?

A It looks like one in that view, yes.

Q Okay. Now, let's go to another piece of prior art, the DX 728 design patent. So that's DX 728. I'm sorry.

That's the Exhibit number, your Honor. It's actually JP 383 design patent.

You reviewed this piece of prior art as well; correct?

A 383, yes.

[1113] Q You agree it's prior art?

A Yes.

Q And if we could go to page 9 and pull out the second image. Put that up next to—on the right we have the '087 and on the left we have DX 728. Do you see that?

A I do.

Q This is a piece of prior art that also is rectangular?

A Yes.

Q Rounded corners?

A Yes.

Q Large display screen?

A Yes

Q Minimalist face?

A I don't know that I can agree with that because in the other views, it's not so minimalist. It has a plastic cover over the unit itself.

Q The lateral borders are very narrow?

A Yes.

Q And the top and bottom border above and below the screen are wide?

A Yes, though if I recall the patent, there are virtually no borders on the sides of the internal unit of that, along the sides.

[1114] Q These spaces above and below the screen are wider?

A Yes, they are.

Q And the screen is balanced both horizontally and vertically in the design?

A Yes.

Q Okay. Let's go to another piece of prior art. This is DX 727.

Your Honor, I forgot—I neglected to move a couple of these Exhibits into evidence, so I might as well do that now.

THE COURT: Okay.

MR. VERHOEVEN: I move into evidence DX 511, which is the Japanese design patent 638. The court. all right. Any objection?

MS. KREVANS: No objection, your Honor.

THE COURT: It's admitted.

(Whereupon, defendant's Exhibit number 511, having been previously marked for identification, was admitted into evidence.)

MR. VERHOEVEN: DX—

THE COURT: 728.

MR. VERHOEVEN: 728, Japanese design patent, 383.

[1115] THE COURT: No objection, right?

MS. KREVANS: No objection.

THE COURT: That's admitted.

(Whereupon, plaintiff's Exhibit number 728, having been previously marked for identification, was admitted into evidence.)

MR. VERHOEVEN: And now we're moving to admit DX 727, a Korean design patent, 547, which we just put on the screen. We move that into evidence.

MS. KREVANS: No objection, your Honor.

THE COURT: All right. That's admitted.

(Whereupon, defendant's Exhibit number 727, having been previously marked for identification, was admitted into evidence.)

BY MR. VERHOEVEN:

Q So going back again, this is another piece of prior art; right?

A I can't read the Korean to confirm it, but I'll take your word for it.

Q Okay. Well, let's go to page 6 of the translation Do you see up here it says publication date, July 6th, 2006?

[1116] A Yes.

Q Okay. That pre-dates both the '087 patent and the '677 patent filings; correct, sir?

A I believe it pre-dates the filing, but I'm not sure—I don't think it pre-dates the conception date that's been identified.

Q Well, you agree it pre-dates the filing date?

A I—without looking at the patent, I'm not 100 percent sure, but it might.

Q Well, would you agree that that's approximately six months before the iPhone was ever even announced publicly?

A Yes.

Q Now, let's go to page 7, the second image on page 7 and pull that out. Put that next to the '087.

So DX 727, rectangular in shape?

A Yes.

Q Rounded corners?

A Yes.

Q It's got a big display screen; yes?

A Not as big, but yes.

Q It's got a lozenge shaped speaker slot? Yes?

A Yes.

Q It's got lateral borders that are narrower [1117] than the top and bottom borders?

A Correct. It does not show a bezel.

Q The screen is balanced; right?

A I'm not sure what you mean by "balanced."

Q Horizontally and vertically centered?

A Yes. Again, I believe this is a distorted view of how one should read a patent.

Q Now, let's also look at JX 1093, I think we have a physical—that's a physical Exhibit, your Honor.

Can I just see that and make sure it's the right one?

You've seen this physical device before; correct?

A Yes.

Q It's the LG Prada phone?

A Yes.

Q Can we put up SDX 3750 on the screen, please.

MS. KREVANS: Your Honor, there's a limiting instruction with respect to this device, that it is not prior art for purposes of any validity—

MR. VERHOEVEN: I dispute that, your Honor.

THE COURT: Is this the KE850?

[1118] MR. VERHOEVEN: No, it is not, your Honor. This is not—this is in evidence.

MS. KREVANS: It was subject to a limiting instruction—

THE COURT: Motion in limine number 3, there was a—this is coming in. Overruled please.

Go ahead, Mr. Verhoeven.

(Whereupon, plaintiff's Exhibit number 3750, having been previously marked for identification, was admitted into evidence.)

MR. VERHOEVEN: Thank you, your Honor.

Q Now, I've got a picture of this phone on the slide SDX 3750. Do you see it on the screen?

A I do.

Q That's the phone you have in your hand; right?

A It is.

Q Okay And this phone is also rectangular in shape; correct?

A Yes.

Q Rounded corners?

A Slightly rounded, yes.

Q What was that?

A They're slightly rounded.

[1119] Q Okay. Is there something different than slightly rounded in the '087?

A I believe the '087 looks more—the overall impression of the '087 is more rounded than these.

Q Okay. And that's a distinguishing difference?

A Within a given range, yes.

Q So if the corners are more sharply rounded, that's a distinguishing factor?

A Within the overall impression, yes.

Q Okay. It has a lozenge shaped slot for the speaker?

A Yes.

Q It's got a large touchscreen?

A I don't know that it's a touchscreen.

Q Well, it's a large screen?

A Yes.

Q Centered?

A It seems so.

Q And the lateral borders are narrower and the top and bottom borders are wider?

A Yes. And it also has a huge button across the bottom.

Q So all of this art we've looked at is rectangular in shape with rounded corners; right?

A I guess you could look at it that way.

[1120] Q Is there a way for us to put each of those images together on the screen? Mr. Fisher, I'm sorry.

There we go. So here we've just put all of these images we've looked at next to the '087. Do you see that, sir?

A I do.

Q In all of these other design patents and this phone are similarly rectangular to the '087, right?

A Yes.

Q And they all have big screens; right?

A Yes.

Q Some of them have lozenge shaped earpieces; right?

A Yes.

Q They all have minimalist design?

A I don't know what that means.

Q You don't know what minimalist design means?

A Not in your comparison of these one views of all these phones.

Q Okay.

A This is not how you review figures in patents.

Q Okay They all have narrower lateral borders of differing widths, but they all have narrower lateral borders?

[1121] A Yes.

Q And larger borders above and below the screen; right?

A That's correct.

Q So—

A At least three of them don't have bezels.

Q And that's important, right, that's important, the absence of a bezel takes you out of substantial similarity, doesn't it?

A In the '087 patent, it does.

* * *

[1198] Q Let's play an excerpt from your deposition, Page 210, lines 14 through 24.

(Whereupon, a videotape was played in open court off the record.)

BY MR. VERHOEVEN:

Q That was true testimony when you gave it?

A That was part of the testimony that I gave that it turns out was, was going both directions depending on—because I misunderstood the use of the term "function" and the question at that time.

Q So that testimony is not true?

A The testimony is true. I was referring to the function as it relates to a design patent, which means they can be any shape and location and size.

And in that sense, it's not functional in that shape, location or size are not required by as functions.

Q Can we put up the hard copy transcript of what we just watched, page 210, lines 14 through 24.

So this is 210, line 14 through 24. April 24th, 2012 deposition.

Sir, do you see the question, it doesn't talk about the design patents, it talks about smartphones.

[1199] Do you see that, sir?

A I see that's what it says.

Q That's what you were asked; right?

A I believe it was asking me about as it related to design patents.

Q But it doesn't say that, does it?

A I don't see it saying that.

Q Using your definition of functional, isn't it true that your opinion to this jury is that the use of a transparent cover over a display is not necessary for functional?

A In defining "functional" as not being driven by the shape and location and it not being—I believe

that's true. I think the fact that it is clear on a smartphone needs—yes, that's functional.

Q Let's play page 209 from the same deposition, lines 9 through 21.

(Whereupon, a videotape was played in open court off the record.)

BY MR. VERHOEVEN:

Q Do you stand by that testimony?

A I believe that's what I may have just said a moment ago.

Q So it's your testimony to this jury that [1200] having a clear cover over the display element is not something that's functional?

A From a performance standpoint and operations standpoint, I believe it's absolutely functional.

Q But just not in your analysis? Is that right?

A If it's clear that it's a—if it is clear in the design patent that it's a display, then one would expect it to be transparent over that display

Q But your conclusion, when you were asked under oath about whether use of a cover that is transparent or a display is functional, is that it's not functional as you've defined it; right?

A I was talking about its shape and location and size and the design patent definition of functionality.

Q And you also testified that—well, let me ask you, in your view, is locating the speaker in the upper portion of the front face of a smartphone something that's not functional as you use that term in your expert reports?

A Defining the precise location from an aesthetic standpoint, is not driven by function.

Q So that's no, it's not functional?

A With the conditions that I just said, yes,

* * *

[1207] Q So I want to focus on that statement that you made in your reports and you're making to the jury that these alternate designs or equally functional. Are you with me?

A I am.

Q Okay. Isn't it true, sir, that the extent of your analysis of whether they were equally functional was simply reviewing the packaging of these other phones and turning them on to see that their operating system was running?

A Actually, most of my analysis did not entail doing those things. Most of it entailed reviewing the design of the phones, the appearance and design of the phones.

Q So—

A How they function—how they function really was insignificant to me.

Q How they function—oh, how these alternative design phones functioned was irrelevant to you?

A It was certainly a lesser element than whether there were alternative designs for something that did the same thing that it was claiming on its

* * *

[1297] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. C-11-01846 LHK

APPLE INC., a California Corporation,

Plaintiff,

vs.

SAMSUNG ELECTRONICS CO., LTD., a Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

San Jose, California
August 7, 2012

Transcript of Proceedings before the Honorable
LUCY H KOH United States District Judge

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Official court reporter: Lee-Anne Shortridge, CSR, CR certificate number 9595
Irene Rodriguez, CSR, CRR certificate number 8074

* * *

[Cross Examination of Susan Kare]

[1366] BY MS. KREVANS:

Q Let me strike that and ask a new questions so you have it in mind.

Is this claim limited to any particular kind of graphical user interface for a display screen?

A It doesn't say. It says ornamental design for a display screen.

Q Okay. Underneath the claim where it says "as shown and described," it has a list of figures.

Did you review the figures in this patent?

A Yes.

Q Okay. Could we look at Figure 1 of the patent, Thomas?

Is Figure 1a—well, what are we seeing on the screen here, Dr. Kare?

A Figure 1 is the image that is the D'305 patent. That's the graphical user interface ornamental design.

[1367] Q Okay. We just saw on the screen both a black and white and a color version of Figure 1. Are both of those in the patent?

A Yes.

Q Okay. Looking at the color version of Figure 1, could you explain to the jury what are the features in Figure 1 that contribute to the overall visual impression it creates?

A Yes. We're looking at the rectangular area that's within the dotted line that goes around the outside.

And I see there's a regular grid of icons that are square with rounded corners, they're about the same distance apart, they're colorful, there's a mix of design styles, there's a label underneath each icon that's upper and lower case, sans serif, light against the dark background.

And at the bottom of the screen there are four icons and there's a graphic behind them that serves to separate them from the rows and columns of icons above.

* * *

[1372] Q Did you form any conclusions, Dr Kare, about whether any Samsung phone had a display screen which had a design that produced the same overall visual impression as the D'305 patent?

A Yes.

Q Okay Did you form that conclusion as to every Samsung phone that you looked at?

A No.

* * *

[1405] Q Now, you mentioned that there was a fourth topic that you were asked to study, and that was whether there were things that suggested to you that Samsung may have copied the iPhone home screen graphics.

What did you do to look at that topic?

A I—there were two, two phases to this.

The first is I went back and I looked at images of every screen I looked at and I thought about how many similarities recurred over and over as a pattern that

seemed to me that all these similarities from phone to phone was beyond coincidental .

[1406] And just—you wouldn't be likely to have so many things be the same if one thing were developed without using the other as a guide.

So it seemed likely to me that Samsung used the iPhone screen graphics as a guide.

Q And you mentioned there were two phases. What was the other phase?

A The other phase was a document I was shown.

Q Okay. Could you look at exhibit PX 44 in your binder.

What is exhibit PX 44, just generally?

A It's a Samsung document I was shown by Apple counsel.

Q Okay. Did you consider this document in forming your opinions?

A I, as I said, from my own—based on my own experience, based on my own analysis, I thought there was a likelihood that the iPhone could have been used as a guide for the graphics in the Samsung phones I saw.

But there was information in this document that supported my own opinion.

* * *

[1410]

BY MS. KREVANS:

Q Dr. Kare, did the contents of exhibit 44 confirm in any way—strike that.

Can you tell us whether—what conclusions you drew from the contents of exhibit 44, but reference, please, in your testimony if you talk specifically, only the contents of pages 122 and [1411] 131.

A I'm sorry. Can I explain what was on another page and how it affected me without showing it?

MS KREVANS: your Honor, I think this would be—

THE COURT: I'm going to allow that. Go ahead.

THE WITNESS: Can I read from it and describe the illustration?

MR. VERHOEVEN: We would object to that, your Honor.

THE COURT: Why don't you just describe the illustration.

BY MS. KREVANS:

Q Why don't you just describe it, Dr. Kare?

A Okay. I saw, on a series of pages, where the—at the top of the page, it talks about some aspect of icon design, and then on the left, there's a picture of the iPhone home screen, on the right there's a picture of the GT i9000, same size, side by side, and then there's bullet points beside each one.

And, typically, in one of these screens, it talks about that there's confusion about the similarity of icons on the Samsung screen.

[1412] And then the document talks about how Apple does it better, how they differentiate, a little bit about the icon style.

And then at the bottom of every one of these pages, there's a pink box and it says, "Directions for improvement," and then it suggests what Samsung

designers ought to do to make their phone better, changes or, you know, note this and try to do this.

And there are red rings around particular icons on the Apple screen and on the Samsung screen, and I can see how, by looking at what ultimately happened, how concrete aspects of the Apple icons affected what ultimately were in the phones that I looked at.

So it did have—it's hard to—not to see from what was shown to me as an internal Samsung design document, how—what happened.

* * *

[1421] Q Okay. Where were we?

We were talking about you provided the testimony about how a consumer might make a mistake or be confused about these application screens thinking that, one, that it's a Samsung application screen and might be an Apple phone, right, or an Apple application screen. Do you remember that?

A That a Samsung application screen would look like the design of the D'305 patent.

Q Didn't you—didn't I hear you say that you thought that a consumer would be confused as to the source?

A When we talked about trade dress.

Q Right?

A When we talked about—excuse me. I thought you were asking me about the D'305.

Q Okay. But you did talk about consumers being—whether or not consumers might be confused by the Samsung application screens.

Do you remember that?

A Yes.

Q Okay. And you thought that there's—that they might be?

A Yes.

Q Okay So let's look at what a consumer would [1422] see when they turn on the phone between the time they have a phone like this in their hands that's turned off and the time that they actually get to the application screen.

I'll try to do this, your Honor, on the Elmo.

Do we have a microphone?

THE CLERK: A microphone?

MR. VERHOEVEN: Yeah I thought there was a little hand mike There we go.

Does this work?

I'm going to put this close to the phone so that—okay

Q So now I'm the consumer, and I'm turning on the phone. What does the consumer see?

A The start-up screen with the—

Q What does it say?

A It says, "Samsung."

Q Still says Samsung

What's Droid? Is that short for Android?

A I don't know I know it's this, the Droid phone has the chin.

Q And now what is the consumer looking at now?

A The unlock screen.

Q So the consumer has to do something here; [1423] right?

A Yes.

Q What do they have to do?

A Move the puzzle piece to the right to unlock it.

Q Okay. Now, what is the consumer looking at?

A The home screen of the Samsung phone.

Q Okay. And so what does a consumer need to do—this is—this screen here is not accused; right?

A No.

Q You weren't even asked to look at this screen; right?

A I would say—I was not asked to consider this screen.

Q Okay. So it's just the application screen; right?

A Yes.

Q Okay. And remind us, what does the user have to do—what does the consumer have to do to get to the application screen?

A Touch the blue button on the lower right with the grid of squares.

Q Okay So it's only after all of those steps that a consumer gets to the application screen. [1424] Fair?

A Yes.

Q Now, Dr. Kare, wouldn't you agree that by the time a consumer goes through all those steps to get to the application screen, that consumer knows that this is a Samsung phone?

A I was only asked to consider this application screen compared to the Apple home screen.

* * *

[1475] Q You're not telling the jury that Apple owns the right to have a colorful matrix of icons, are you?

A No.

Q And you're not telling the jury that Apple owns the exclusive right to have the icons arranged in rows and columns in a grid matrix, are you?

A No.

* * *

[1638] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. C-11-01846 LHK

APPLE INC., a California Corporation,

Plaintiff,

vs.

SAMSUNG ELECTRONICS CO., LTD., a Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York Corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

San Jose, California
August 10, 2012

Transcript of Proceedings before the Honorable
LUCY H. KOH United States District Judge

Volume 6
Pages 1638-1988

Official court reporter: Lee-Anne Shortridge, CSR, CRR Certificate number 9595

* * *

[Direct Examination of Boris Teksler]

[1955] built the foundational positioning.

Q What is Apple's position on licensing this portion of its patent portfolio?

A So unlike standards where we have to license, this is an area where we don't have to license.

* * *

THE WITNESS. So with respect to the computing portfolio, it's not one that we have to license, but we're certainly willing to discuss licensing.

We do that with two primary goals. The first one is that we want to get fairly compensated for the work that we've done; and the second—and the second one is we want to make sure that we safeguard Apple's differentiated user experience.

BY MR. MUELLER:

Q Mr. Teksler, Let's turn, if we could, to the third category in the Apple portfolio. Would you remind us what that is?

A Certainly. That's Apple's unique user [1956] experience I.P.

Q What does that refer to?

A So I would describe that in a couple different ways. From a top level, it's that which makes our brand identity and keeps us unique in the marketplace, and it's what we don't wish to share and other people to make.

So with that, I would say from a technical perspective, it includes trademarks, trade dress, all the design patents, and a small set of utility patents that really deal with user interface elements, and maybe a couple of associated features.

Q And how does this category relate to wireless devices?

A Well, I guess you don't really need a license to this. From our perspective, unless you're trying to build an iPhone knock-off or a clone or an iPad clone, you wouldn't need a license to this set of I.P.

Q And to be clear, what is Apple's position on licensing this portion of its portfolio?

A We strongly desire not to license it. It's not an area that we license, and our goal in licensing is to enable people to design their own [1957] products, not the ability to just copy our products.

Q Has Apple ever licensed any of the patents within this category?

A Certainly over time we have, but I can count those instances on one hand quite easily. And we do so with rare exception and we do it consciously knowing that we're not enabling somebody to build a clone product.

* * *

[1963] THE COURT: All right. Overruled.

BY MR. MUELLER:

Q Mr. Teksler, if you could, please turn to tab 2 in your binder, and this is PDX 32. If we could also put that on the screen.

Mr. Teksler, This shows seven patent covers. Are you familiar with these patents?

A I am.

* * *

Q Are these the seven asserted patents?

A Yes, they are.

Q Where do these fall, these seven patents, within the categories you described earlier in the Apple portfolio?

[1964] A Certainly. So there's four design patents, and all four design patents fall into Apple's unique user experience.

And then the three utility patents that are listed here generally relate to user interface and features that we would also put in that same category of Apple's unique user interface, or user experience.

* * *

CROSS-EXAMINATION

BY MS. MAROULIS:

Q Good afternoon, Mr. Teksler. How are you?

A Good afternoon.

Q My name is Victoria Maroulis. I'm counsel for Samsung. And seeing how it's late friday afternoon, I'll be very brief

You testified that you prepared a Powerpoint for a meeting between Apple and Samsung in August 2010. Is that correct?

A I believe that was Key Note, but yes.

Q And you didn't personally attend the meeting in question; right?

[1965] A No, I did not.

Q You cannot tell us from your personal knowledge anything about that meeting and what was presented; correct?

A I know that that was presented. We later sent Samsung the presentation and, in subsequent meetings with Samsung, we referred back to that presentation and to the dialogue that happened that day. So that's—

Q But from personal knowledge, you do not know what occurred at that meeting and what was shown and what was not shown; correct?

A Okay, certainly.

Q And the Powerpoint presentation that you prepared is exhibit 52 in evidence; correct? If you can look in your cross-examination binder at tab 52, do you see that?

A I do.

Q If you look at pages 12 through 14, do you see a variety of patents listed there?

A Yes, I do.

Q Okay. And do you remember, on direct, Joe asked you about the seven patents asserted in this case; correct?

A Yes, that's correct.

[1966] Q Four of them were design patents?

A Yes, that's correct.

Q One of those design patent patents was D'677; right?

A I believe that's correct, yes.

Q That patent is nowhere in this presentation; Is that correct?

A It's not enumerated.

Q It's not mentioned at all as a patent, the D'677; right?

A So I think what I would say is I agree that it's not enumerated in the presentation.

When we were preparing the, the points that we wanted to get across—and I believe that was back in slide 17 of this presentation—we did say that there was a remarkable similarity between the products and, in doing so, we did talk about design patents.

Q Sir, this presentation does not mention the word "design patent" at all; correct?

A I agree.

Q And design patent '087 that you reviewed with counsel is also not mentioned in this presentation; is that right?

A I agree.

[1967] Q And design patent '889 is similarly not mentioned in this presentation; correct?

A I agree.

Q And so is D'305, that is also not mentioned in the presentation; right?

A I agree.

* * *

[1] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

[Filed 08/12/12]

Case No.: 11-CV-01846-LHK

APPLE INC., a California corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., A Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

ORDER RE: OBJECTIONS REGARDING MUSIKA, PALTIAN, ZORN, BEDERSON, BOGUE, FORLINES, AND YANG; ORDER GRANTING APPLE'S MOTION TO EXCLUDE TESTIMONY

* * *

[8] I. Hyong Shin Park

COURT'S RULING ON MOTION TO EXCLUDE

Apple moves to exclude the testimony of Hyong Shin Park, one of the inventors of the F700. ECF No. 1647. Samsung has filed an opposition. ECF No. 1664. Apple filed a reply. ECF No. 1676. For the reasons set forth below, the Court GRANTS Apple's motion.

Judge Grewal previously excluded Samsung's theory that the F700 anticipated, or rendered obvious the D'677 Patent for failure to timely disclose the

theory in discovery. ECF No. 1144 at 3-5 This Court affirmed Judge Grewal's Order. ECF No 1545 Indeed, Samsung was precluded, for the same reasons, from asserting its independent derivation theory in opening statements. *See* ECF No 1456. Samsung has generally been permitted to rely on the F700 for alternative design and functionality purposes to rebut the testimony of Peter Bressler. *See* Aug. 6, 2012 Tr. at 1184:1-4.

Samsung has presented an offer of proof that it intends to illicit the testimony of Ms. Park to establish functionality of the F700 design, and to rebut allegations of copying or willfulness While these topics have not prohibited, the Court finds that the risk of undue prejudice to Apple outweighs the probative value of Ms Park's testimony and is excludable pursuant to FRE 403

As to Samsung's argument that Ms. Park should be allowed to testify regarding the functionality of the F700 design, this testimony is of limited probative value As the designer of the F700 and a named inventor of the KR'985 Patent, Ms. Park's testimony is of limited probative value in evaluating *Apple's* design patents in suit. Moreover, Ms Park did not design any of the accused devices. Indeed, Ms. Park testified that she is unaware of any Samsung phone having been based on the F700. *See* Bartlett Decl. Ex 4. Moreover, the Court notes that Samsung's position with respect to Ms. Park's testimony is somewhat inconsistent On the one hand, Samsung explains that Ms. Park will testify that the F700 was functional, but also that she obtained a design patent (the KR'985 Patent) for the same design. This inconsistency underscores the limited probative value of the evidence. In contrast, there is a real likelihood that the jury will consider Ms.

Park's testimony for a purpose that has been excluded by Judge Grewal.

Similarly, Samsung also argues that Ms. Park may testify that the F700 rebuts an allegation of copying or willfulness. While the F700 may be probative of non-willfulness and to rebut an allegation of copying, it is unlikely that a jury will be able to consider Ms. Park's testimony without using it for a purpose that has been excluded by Judge Grewal. Ms. Park will testify regarding the creation of the F700 and the KR'985, and it is highly likely that the jury will view this as evidence of an independent derivation of the designs at issue. Moreover, the Court is unconvinced that a limiting instruction will sufficiently address this issue. Therefore, under FRE 403, the Court excludes the testimony of Ms. Park.

IT IS SO ORDERED.

Dated: August 12, 2012

/s/ Lucy H. Koh
LUCY H KOH
United States District Judge

[1989] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. C-11-01846 LHK

APPLE INC., a California Corporation,

Plaintiff,

vs.

SAMSUNG ELECTRONICS CO., LTD., a Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

San Jose, California
August 13, 2012

Transcript of Proceedings before the Honorable LUCY H. KOH United States District Judge

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Official Court Reporter: Lee-Anne Shortridge, CSR, CRR Certificate Number 9595

* * *

[2040] Q Okay. For purposes of forming your opinions in this case, have you done anything to evaluate Samsung's accused smartphone sales and Samsung's accused tablet sales?

A I have.

Q Okay. Can we see slide 34B.6.

What was your overall conclusion about the volume of Samsung's accused smartphone and tablet sales and the revenues associated with that?

A Well, the damage numbers I've just given you are very large, and they're very large because we're dealing with a very large quantity of sales.

What's depicted here is that the combination of smartphones and tablets, over the two years that's at issue in this case, Samsung has sold 22 7 million individual smartphones and/or tablets.

The amount that's associated with those sales is $8,160,000,000 That's Samsung's number. That's just—that's that money that slid across It was equal to $8,160,000,000.

* * *

[2043] We go to the same spot, and there's the 1,438 tablets, we add that to the smartphone to get to the $22 million—or 22 million units, and there's 644,000, which we add that back to the smartphones, we get to the $8.1 billion.

Q Now, Mr. Musika, you said 644,000, that number there is—because it's missing zeros, it's actually what?

A Millions. Sorry. I did it myself. I apologize.

Q All right. Does this represent sales just in the United States?

A Sales of tablets and smartphones only in the united states by the defendant Samsung.

Q Okay. Have you looked at information about how Samsung's sales of the accused products in this case—let me start over.

Have you looked at information about how Samsung sales of smartphones and tablets before the introduction of the accused products in this case compared to Samsung sales of smartphones and tablets after the introduction of the accused products?

A Yes.

Q Okay. Could we see slide 34B.9. What [2044] information is shown on 34B.9, Mr. Musika?

A This is a graph, and on the vertical axis, it's the market share percent. So it's how much of the overall smartphone market did Samsung have over time, which is our horizontal x axis there.

And the slide is divided up, as you just indicated, into two segments. On the left-hand side with the blue is the time period for Samsung prior to the introduction of their first accused phone, and what we can see then with the introduction of the first accused phone, the red line, on the right-hand side is the period of time afterwards.

Q And how do the two periods, that is, before and after, compare to one another?

A Yes. It's a rather dramatic demonstration of Samsung was losing market share during the period prior to 2010, approximately June of 2010 when they introduced the first accused phone.

After they introduced the first accused phone, Samsung's market share took an abrupt upward swing and has continued today to advance dramatically in increases in market share.

Q Where did the information that forms this chart come from?

[2045] A Once again, this isn't my information. This is taken not from Apple or from Samsung in this case. This is taken—you can see perhaps right down there on the bottom, source IDC Worldwide Quarterly

IDC is an independent marketing organization that both Apple and Samsung use to help them in doing their own market research. So this is an independent study and analysis that was done by IDC.

Q Okay. Let's turn to the specific damages remedies that you evaluated in this case

What kinds of remedies did you apply with respect to the various intellectual property rights that Apple has asserted in the case?

A I considered three different forms of remedy in total as it relates to the design, and that would be the design patent and the trade dress. I considered two forms of damage.

Q What were those two forms?

A One, one is called Samsung's profits, and the other is called Apple's lost profits.

To put it in real straight terms, it's either what Samsung has gained or it's what Apple has lost.

* * *

[2049] A Well, it's—it's—it's easy to visualize, but it's hard to imagine.

But the calculation really had to be done on a phone-by-phone, tablet-by-tablet basis. Each phone, each tablet deserves or gets its own damage, and so that calculation had to be done individually on each one of those products.

Q And how did you decide, for each one of those products, which of the three different kinds of damages you described should be assigned to it?

A Well, there were several criteria. One we just went through, which is the form of damages.

Another would be the time period in which—not all sales occurred at the same time They occurred at different times.

And not all the intellectual property, whether it was a utility patent or a design patent, they didn't all issue at once. So they issued at various points in time

So it's really the intersection of when something was sold, which form of damages—which form of intellectual property it is accused of, and then making that calculation on, again, a unit-by-unit basis

Q Okay. Could we see slide 34B.56.

* * *

[2054] Q And what was the next step?

A The next step is what we all—regardless of what business we're in, all of us incur the same thing. We have revenue because we make a sale, and we have expenses. Nobody just gives us money. And Samsung incurred expenses to generate that 6,411,000,000, so I had to identify how much did it cost Samsung to earn or generate that 6,411,000,000.

Q Okay. So let's see the next slide.

A And there you see—there you see the cost of goods sold, how much did it cost, what are the directly attributable costs that Samsung incurred, and that's 4,170,000,000.

If I subtract that from that prior [2055] number, that gets us down to the bottom, $2,241,000,000.

Q Okay. Have you done this calculation for each of the different products accused of violating one of Apple's design or trade dress patent rights?

A Yes.

Q Could we see slide 34b.19?

What is depicted here, Mr. Musika?

A This is just a, an additional slide to help the court see that not only did I do it on an individual tablet-by-tablet, smartphone-by-smartphone basis, but those are by model, too.

So here is that Samsung's profits divided, or shown by model, both for tablets and smartphones.

Q Okay. Has Samsung also provided a calculation in this case of what it says are its profits on this same group of 17 million devices?

A Well, not to confuse anyone. My number that I've just given you is Samsung's number, too.

But I deducted certain costs and Samsung would—would and has said that they've incurred additional costs that should be subtracted.

So there's no dispute about the numbers [2056] that I'm using. It's just that there's a dispute about how much—how many costs should be included in the calculation.

Q Could we see PDX 34b.20.

What have you shown on this slide, Mr. Musika?

A There's no math in this slide. There's just three numbers. The first number is the favorite number, or the old number we know, the 8.1 billion total revenue. So that's the revenue at issue.

The middle number is my number of what the unjust gain is. That's the same $2.2 billion number.

But the number on the right is another Samsung calculation which takes my 2.2 billion and takes it down to $1,086,000,000.

Q And what is—since you both started with the same numbers from Samsung's records, what is the reason for the difference between your calculation of total profits on these 17 million phones and Samsung's calculation of total profits on these 17 million phone?

A We're going to see it in just a second, but it's real simple. Keep in mind I deducted costs which are directly attributable.

[2057] Samsung deducted those costs as well, but they deducted additional costs which I did not deduct, and we'll look at those presently.

Q Okay Why don't we look at Exhibit 28. It's in your binder. And could we start simply by you identifying what Exhibit 28 is.

A Exhibit 28 is a—this is a schedule that I prepared using Samsung's records, translated records, for sec and I used it for purposes of looking at the types of costs—this will list all their costs from top to bottom, and we'll see the kind of costs I deducted and the additional costs that Samsung deducted.

MS. KREVANS: Okay. Your honor, we move the admission of Exhibit PX 28.

MR. PRICE: No objection.

THE COURT: All right. It's admitted.

(Whereupon, plaintiff's Exhibit number 28, having been previously marked for identification, was admitted into evidence.)

BY MS. KREVANS:

Q You say you prepared this. What was the source of these numbers?

A Samsung records.

[2058] Q Did you change the numbers in any way when you prepared this schedule?

A The numbers are—they're important, but they're not the numbers. They're the numbers for the overall entity. So it has other sales of non-accused items.

My focus is really more on terms of the types of accounts, but I didn't change this. This comes directly—this is the type of accounts and the numbers come directly from Samsung.

Q Okay. Could we just make a little larger,

Mr. Lee, the top portion of this down through line, gross sales profit percentage.

What's depicted here, Mr. Musika?

A Samsung's records are, are the same as, in many other sophisticated, same as Apple's. They're prepared basically in the same format.

And the basic format of a financial statement, or a profit and loss statement, is no different than our personal profit and loss statements.

We start at the top with how much did we earn, what's the revenue? And then we deduct expenses.

Starting at the top, those expenses are [2059] directly attributable. As you move down and you get to where people usually refer to it, the bottom line, those costs that are included become less and less specifically associated with the revenue.

So here we see revenue, quantity at the top, and then sales in terms of total dollars.

Q And I take it from what you said a couple minutes ago, where it says sales $30 billion, you didn't use all 30 billion of those dollars in your calculations?

A No. Again, this is their numbers from the sec manufacturing entity that has sales of other items in there, so I've already pulled my—my 8 billion, or Samsung's 8 billion is in that $30 billion number in there, but there are other things in there and we shouldn't be focussed on those numbers.

Q Okay. You see at the bottom portion of this Exhibit 28 that we're looking at on the screen right now, there are two lines that say "gross sales profit" and "gross sales profit percentage."

What are those numbers?

A Standard accounting terminology. Sales minus cost of goods sold, that's—C.O G.S. stands for cost of goods sold, and those are costs which are [2060] directly attributable to the production and/or sale of the accused devices.

And this is—again, this isn't my construction. This is really generally accepted accounting principals and this is directly from their statements

And that gets us, if we deduct the cost of goods sold from the sales, we get a gross profit number and percentage.

Q And what's the gross profit percentage?

A Gross profit percentage is, in this statement is 39.2 percent.

Q What was the average gross profit amount that you found in Samsung's financial records for the $8 billion in sales of the accused products in the United States?

A All right. The accused products have slightly lower gross profit percentage. Per my recollection, the overall gross profit percentage on just the accused products was approximately 35.5 percent.

Q Okay. You said a couple minutes ago that if we move down this same page of Exhibit 28, we're going to see some other kinds of expenses.

A Yes.

[2061] Q Do you believe that those other expenses are appropriate to be deducted in calculating Samsung's total profits for purposes of damages in this case?

A First of all, Samsung deducts all those other expenses. They were incurred. I'm not disputing they were incurred.

But I do not think it is appropriate to deduct those to get to the profit number which would reward Apple for Samsung's unjust enrichment.

So really all the expenses below there are really the disagreement.

* * *

[Re-Direct Examination of Boris Teksler]

[2112] Q Okay. So let's go back to your chart then, if we can.

Is it your understanding that Apple—by the way, Apple comes out, basically, with a new phone once every couple of years?

A Might be a little bit more frequently than that, but something in between a year and two years I'd say.

Q And what you've noticed is that—when you look at the charts is that Apple's sales dramatically spike when it comes out with a new phone; correct?

A That's correct.

Q Because its customers haven't—they have the [2113] old model and they want a new, prettier advanced one; right?

A They wait. That's constantly—customers will wait because they want—they figure, "it's coming out. I'll wait and get it when it comes out."

Q Whereas Samsung comes out with lots of phones per year?

A Certainly more than Apple, yes, that's true.

Q And the spike in—we've got, like, in 2011, you've got Samsung going up—at this point we're talking about phones like the Galaxy S II; correct?

A I think that's right. Again, I don't have committed to memory the launch dates of each of the phones. That is an accused phone, and I think it is in the 2011 time period.

Q Okay. So if you want to see, you know, what Samsung is actually selling, how it's creating this, this, these sales, you'd want to look at kind of what phones are actually driving this; right?

A I don't understand the question. I'm sorry.

Q Well, I mean, you'd want to see, in 2010 or 2011 here, what's the phone mix that Samsung has, because it doesn't just have one phone; right?

A Right But the purpose—I'm not disagreeing [2114] with that. I'm just saying I don't understand the question.

The purpose of this is to show the smartphone market share If you want to know how a particular phone is doing, you should look to that phone and break it down.

Q Well, if you want to look to see whether or not it's because Samsung did something wrong, that is, whether or not a particular phone was, was something that was driving injury to Apple, you'd have to look at the particular phone, like the Droid, and make a decision as to whether or not it infringed, right?

A Yes. Agreed.

* * *

[Samsung Oral Rule 50(a) Motion]

[2189] And Apple has made no effort at all to apportion those, nor, under the design and patent act or the design patent damages provision, has Apple made any effort to limit the profits it's [2190] seeking to the article to which the design is applied.

That's the plain language of that statute. They are acting—they are assuming that the article to which the design is applied is the entire product, which is erroneous as a matter of law.

They have not factored out, for example, the technology and what drives those profits.

They are simply asking for all of them, and so that's insufficient as a matter of law as well.

And I think I mentioned it, but just to be clear on this, they have also failed to separate out infringing versus non-infringing products, or accused versus non-accused products.

There is no evidence from which the jury can make a determination for damages on a product-by-product and patent-by-patent basis. They are literally just simply saying, "I'm assuming that everything is infringing and this is the number that should be awarded."

But that is not sufficient for purposes of the damages here.

* * *

[1] [COUNSEL LISTED ON SIGNATURE PAGES]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

[Filed 08/13/12]

Case No. 11-cv-01846-LHK

APPLE INC., a California corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., a Korean corporation; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; and SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

REVISED (DISPUTED) JOINT PROPOSED JURY INSTRUCTIONS FOR AFTER THE CLOSE OF EVIDENCE

Place: Courtroom 1, 5th Floor
Judge: HON. LUCY H. KOH

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[136] PROPOSED FINAL JURY INSTRUCTION NO. 42 DESIGN PATENT INFRINGEMENT DAMAGES—DEFENDANT'S PROFITS

Apple's Proposed Instruction

If you decide not to award Apple its lost profits for certain sales by Samsung that infringed Apple design patents, you should award Apple the total profits that Samsung earned from those infringing sales "Total profits" include the entire profit on the sale of products with patented designs, and not just the portion of profit attributable to the design. "Total profits" do not include profit attributable to other products that may have been sold in association with an infringing article

Profit is determined by deducting certain expenses from gross revenue Gross revenue is all of Samsung's receipts from the sale of infringing products. Apple has the burden of proving the gross revenue that Samsung more likely than not received.

Samsung has the burden of proving the deductible expenses. Expenses can include costs incurred in producing the gross revenue, such as the cost of the goods. Other costs may be included as deductible expenses if they are directly attributable to the sale or manufacture of the infringing products.

Source

Adapted from The Intellectual Property Owners Ass'n Model Design Patent Jury Instr. 10.8.

Authorities

35 U.S.C. § 289, *Catalina Lighting, Inc. v. Lamps Plus, Inc* , 295 F 3d 1277, 1291-1292, (Fed Cir 2002); *Nike, Inc v. Wal-Mart Stores, Inc.*, 138 F 3d 1437, 1447-48 (Fed. Cir 1998); *id.* at 1442-43 (noting that Congress removed "the need to apportion the infringer's profits between the patented design and the article bearing the design" when it passed the Act of 1887, which was subsequently codified under 35 U S.C § 289); *Braun,*

Inc. v. Dynamics Corp. of Am., 975 F.2d 815, 824 (Fed. Cir. 1992); *Trans-World Mfg. Corp. v. Al Nyman & Sons, Inc.*, 750 F.2d 1552, 1566-68 (Fed. Cir. 1984); *Bergstrom v. Sears, Roebuck & Co.*, 496 F. Supp. 476, 495 (D Minn. 1980); *id.* at 497 ("The burden of establishing the nature and amount of these costs, as well as their relationship to the infringing product, is on the defendants."); *Junker v. HDC Corp.*, No. C-07-05094 JCS, 2008 WL 3385819, at *3 (N.D. Cal. July 28, 2008) ("patent holder is not required to demonstrate that the profits are attributable to the ornamental qualities of the item in the design patent" but is "entitled to the entire profit obtained by the infringer as a result of sales of the item with the infringing design"); *Apple Inc. v. Samsung Electronics Co.*, Ltd., No. 11-CV-01846- LHK, Order Granting-in-Part and Denying-in-Part Motions to Exclude Expert Testimony, Dkt. No. 1157, at 9 (N.D. Cal., June 30, 2012) ("Apple's motion to exclude Mr. Wagner's testimony apportioning damages with respect to Apple's design patent claims is therefore GRANTED."); *Schnadig Corp. v. Gaines Mfg. Co., Inc.*, 620 F.2d 1166, 1171 (6th Cir. 1980) (stating that the "parties are agreed that the expenses which vary directly with productive activity should be deducted in determining total profits"). The requirement that deductible expenses be "directly attributable" to the manufacture or sale of infringing items is in the IPO instruction and clearly spelled out in Ninth Circuit copyright cases. *See, e.g., Kamar International, Inc. v. Russ Berrie & Co.*, 752 F.2d 1326, 1332 (9th Cir. 1984) ("allowing a deduction for overhead only when the infringer can demonstrate it was of actual assistance in the production, distribution or sale of the infringing product"); *Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc.*, 772 F.2d 505, 516 (9th Cir. 1985), rev'd

after remand on other grounds, 886 F.2d 1545 (9th Cir. 1989) ("defendant bears the burden of explaining, at least in general terms, how claimed overhead actually contributed to the production of the infringing work"); 7-20 Chisum on Patents § 20 03 (In design patent infringement actions . . . , the courts look to pre-1946 utility patent case law, as well as copyright [137] and other cases, for guidance in determining the amount of accountable profits"). *See also* Apple Objection to Samsung's Proposed Instruction No. 40 (regarding election of remedies).

Samsung's Objection to Apple's Proposed Instruction

Apple's proposed instruction fails to mention its burden of proof by a preponderance of the evidence. It also does not address the requirement that Apple make an election for either actual damages or Samsung's profits, as set out even in the draft IPO Model Design Patent Jury Instruction that Apple-affiliated attorneys helped create prior to this case. *See id.* ("A plaintiff in a design patent case can elect to prove either actual damages, known as compensatory damages, or they may elect to prove the defendant's profits as its measure of potential recovery") On the contrary, it misleadingly implies that Apple may obtain both remedies. No court has ever allowed what Apple proposes here—to split its recovery between actual damages as lost profits under Section 284 and infringer's profits under Section 289. Thus, Apple's proposed instruction should be rejected as incomplete, legally inaccurate, and skewed in favor of Apple, and is not supported by persuasive authority. It also refers to "Samsung" generally rather than identifying the Samsung defendants. It also adds a requirement – "directly" attributable – that is not required by law

and fails to note that expenses may be attributable to the sales *or manufacture* of the infringing products *Nike, Inc. v. Wal-Mart Stores*, Inc., 138 F.3d 1437, 1447-48 (Fed. Cir 1998) (affirming deduction of "direct and indirect costs"). None of the authority cited by Apple states that expenses must be "directly attributable" to the sale or manufacture of the infringing products.

[138] Samsung's Proposed Instruction[10]

In this case, Apple alternatively seeks Samsung Electronics Company's, Samsung Electronics America's, and Samsung Telecommunications America's profits from sales of products alleged to infringe Apple's design patents. Accordingly, if you find infringement by Samsung Electronics Company, Samsung Electronics America and/or Samsung Telecommunications America, do not find Apple's design patents are invalid, and do not award Apple lost profits and/or a reasonable royalty, you may award Apple Samsung Electronics Company's, Samsung Electronics America's and/or Samsung Telecommunications America's total profit on sales of articles alleged to infringe Apple's design patents.

The "total profit" of Samsung Electronics Company, Samsung Electronics America and/or Samsung Telecommunications America means the entire profit on the sale of the article to which the patented design is applied, or with which it is used and not just the portion of profit attributable to the design or

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[10] Samsung objects to Apple's attempt to obtain both lost profits and infringer's profits as unsupported by any legal authority Samsung offers this instruction solely in the event that the Court disagrees Samsung also offers this instruction subject to its objection that any disgorgement of profits should be subject to apportionment.

ornamental aspects of the patent. "Total profit" does not include profit attributable to other products that may be sold in association with an infringing article embodying the patented design.

If you find infringement by any Samsung defendant, and do not award Apple lost profits and/or a reasonable royalty, you may award Apple all profit earned by that defendant on sales of articles alleged to infringe Apple's design patents, and that is attributable to whatever infringement you have found by that particular defendant. Profit is determined by deducting certain expenses from gross revenue. Gross revenue is all of the infringer's receipts from the sale of articles using any design found infringed. Apple has the burden of proving the infringing defendant's gross revenue by a preponderance of the evidence.

Expenses can include costs incurred in producing the gross revenue, such as the cost of the goods. Other costs may be included as deductible expenses if they are attributable to the sale or manufacture of the infringing products resulting in a nexus between the infringing products and the expense. Samsung has the burden of proving the deductible expenses and the portion of the profit attributable to factors other than use of the infringed design by a preponderance of the evidence.

Unless you find that a portion of the profit from the sale of the infringing product is attributable to factors other than use of the infringed design, you shall find that the total profit is attributable to the infringement.

Source

Intellectual Property Owners Association, Proposed Design Patent Model Jury Instr., No. 10.8 (modified).

Apple's Objection to Samsung's Instruction

The parties' proposed instructions on defendant's profits under section 289 differ in four ways. (1) Samsung's proposed instruction fails to reflect the Court's prior ruling in this case that profits awarded under section 289 cannot be apportioned; (2) Samsung's proposed instruction omits the word "directly" from a sentence addressing deductible expenses, which is an important element [139] of Samsung's burden, (3) Samsung's proposed instruction repeats unnecessarily the requirements of validity and infringement; and (4) continuing its pattern as noted above, Samsung keeps referring in its damages instructions to "alleged" infringement rather than "infringement." Apple's instruction reflects a direct recitation of the statute's grant of total profits *First*, the instruction includes three statements on the apportionment of the defendant's profits, the amount that is "attributable" to the design or the infringement, and the amount "attributable" to factors other than the design. But the Court has made clear based on controlling Federal Circuit law that if Samsung is found to infringe Apple's design patents, Apple is entitled to recover all of Samsung's profits relating to the accused products without apportionment. This issue was resolved in Dkt. No. 1157 (Daubert order) at 9, which excluded Samsung's expert testimony as "contrary to law." Samsung's footnote acknowledges this issue. *Second*, Samsung's proposed instruction incorrectly omits the word "directly" from the statement "Other costs may be included as deductible expenses if they are *directly* attributable to the sales of the infringing products . . ." The Intellectual Property Owners Ass'n Model Design Patent Jury Instructions include the word "directly" and are an accurate statement of the law. This is an important

element of Samsung's burden of proof in proving those costs that will be deducted, and the jury will hear competing evidence from each side's damages experts on which costs are and are not "directly attributable" to the product sales. *See Schnadig Corp. v. Gaines Mfg. Co., Inc.*, 620 F.2d 1166, 1171 (6th Cir. 1980) (stating that the "parties are agreed that the expenses which vary directly with productive activity should be deducted in determining total profits,"); *see also Bergstrom v. Sears, Roebuck & Co.*, 496 F. Supp. 476, 497 (D. Minn. 1980) ("The burden of establishing the nature and amount of these costs, as well as their relationship to the infringing product, is on the defendants."). Third, Samsung, consistent with the improper pattern it set in other instructions, repeats the requirement of validity and infringement where it is not necessary. This requirement is set out in prior instructions and need not be repeated for the benefit of the defendant whenever a new damages subject matter is introduced. Finally, Samsung at least three times in its proposed instruction refers to "alleged" infringement. The jury will only determine damages if it finds that Samsung infringes. The word "alleged" does not belong here

[140] PROPOSED FINAL JURY INSTRUCTION NO. 42.1 DESIGN PATENT DAMAGES—PROFITS

Samsung's Proposed Instruction

If you find that Samsung Electronics Company, Ltd , Samsung Electronics America, Inc. or Samsung Telecommunications America, LLC infringed any of Apple's design patents, and if you decide to award Apple profits from Samsung Electronics Company, Ltd 's, Samsung Electronics America, Inc 's or Samsung Telecommunications America, LLC's sales, you should award only those profits which were

derived from the article of manufacture to which Apple's patented design was applied The article to which Apple's design was applied may be the same as or different from Samsung's devices as sold because devices offered for sale may incorporate a single article of manufacture or several articles of manufacture The article of manufacture to which a design has been applied is the part or portion of the product as sold that incorporates or embodies the subject matter of the patent. Where the article of manufacture is a case or external housing of the device, then only the profits from the sale of the case or external housing of the device should be awarded. Under these instructions, an award of profits for design patent infringement should not include profits earned from the technology by which the devices operate or from any other functions of the devices.

Authority:

Bush & Lane Piano Co. v. Becker Bros., 222 F. 902, 904 (2d Cir. 1915) ("When the patent owner is awarded the profits due to his design he receives all he is entitled to. If the rule be established that a design for a cases enables the owner to collect damages for the case not only, but for the contents of the case as well, it will lead to results which shock the conscience.") (profits properly "confined to the subject of the patent – a piano case"), *id.* at 904 (reversing award of "the entire profits of the sales of the piano and case" and holding that only "the profits upon the sale of the case" could be disgorged).

Apple's Objection to Samsung's Instruction

Samsung's proposed instruction is inconsistent with Federal Circuit law and relies entirely on a single, non-controlling, 97-year-old case involving a different set of facts First, Samsung's reading of *Bush & Lane*

Piano Co. v Becker Bros., 222 F. 902 (2d Cir. 1915) is inconsistent with controlling Federal Circuit law as set forth in *Nike, Inc. v. Wal-Mart Stores, Inc.*, 138 F.3d 1437 (Fed. Cir. 1998). Pursuant to 35 U S.C. § 289, a patent holder may recover total profits on "the article of manufacture." 35 U.S C § 289. The Federal Circuit in *Nike* explains that this refers to the product that is sold, as § 289 does not allow for apportionment *Nike, Inc.*, 138 F.3d at 1442 (Congress removed "the need to apportion the infringer's profits between the patented design and the article bearing the design" when it passed the Act of 1887, which was subsequently codified under 35 U.S.C. § 289"). *See also Junker v. HDC Corp* , No. C-07-05094 JCS, 2008 WL 3385819, at *3 (N.D. Cal. July 28, 2008) ("patent holder is not required to demonstrate that the profits are attributable to the ornamental qualities of the item in the design patent" but is "entitled to the entire profit obtained by the infringer as a result of sales of the item with the infringing design"), *Bergstrom v Sears, Roebuck & Co.*, 496 F. Supp. 476, 495 (D. Minn. 1980) (rejecting defendants' argument that recoverable profits should be reduced to only profits resulting from design of the article). Moreover, *Bush & Lane Piano Co.* is factually distinguishable because it refers to the piano case being sold separately from the piano. The Court reasons that "[a] purchaser desiring a piano of a particular manufacturer may have the piano placed in any one of several cases dealt in by the maker," which are facts plainly not present here 222 F at 903-04. Indeed, here the patents claim an electronic device, not simply a case. As such, *Bush & Lane Piano Co.* is an irrelevant, contradictory, non-controlling case that serves as the sole basis of [141] Samsung's proposed instruction. Apple's proposed

instruction No. 42, on the other hand, contains a clear and accurate statement of the law

[2321] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. C-11-01846 LHK

APPLE INC., a California Corporation,

vs.

SAMSUNG ELECTRONICS CO., LTD., a Korean Business Entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

San Jose, California
August 14, 2012

Transcript of Proceedings before the Honorable LUCY H. KOH United States District Judge

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Official Court Reporter: Lee-Anne Shortridge, CSR, CRR Certificate Number 9595 Irene Rodriguez, CSR, CRR Certificate Number 8074

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[2522] DIRECT EXAMINATION

BY MR. QUINN:

Q Would you please state your full name for the record?

A JINYEUN WANG.

The court: it's 1:23. Go ahead.

BY MR. QUINN:

Q And by whom are you employed?

A That would be Samsung electronics.

Q And what type of work do you do at Samsung [2523] Electronics?

A I design UX, otherwise known as user experience.

Q And is that for the Galaxy, include the Galaxy phones?

A Yes, that is correct.

Q And does that include designing the icons and the icon layout on the menu page on the Galaxy phones?

A Yes, that is correct.

Q All right. were you and the team that you lead responsible for designing the icons and the layout of the icons on the menu page for the Galaxy phones?

A Yes, that is correct.

Q In doing that, did you copy any Apple icons or the layout on the Apple application page?

A Not at all.

* * *

[2530] Q Ms Wang, we've heard testimony from Apple witnesses about how hard they worked to bring the iPhone to market

Did you—would you tell us what it was like working on the Galaxy phone, the design aspects for the user experience that you worked on?

A Yes, I can Samsung is a company that's very tough to work at and in Korea. It's a very hard working type of company Anyway, when we were designing Galaxy SI, we had people from Seoul and also from Suwon, and also from Gumi. The people from Suwon, there were hundreds of developers, and also people from Gumi, there were multiple of tens who were involved in verifications.

So with all those people coming from different places. There was at one point where we [2531] had all come together and worked together as a team for about three months and during that time period of three months, my recollection would be that I slept perhaps two hours or three hours a night. That was about it.

And also during that time period, I actually encountered something that was very difficult for me. Back then I had just given birth to a newborn, and I was feeding mother's milk to the baby. But since I wasn't able to be with the baby so much, I had to save the breast milk.

But it just happened that I wasn't able to do that on a consistent basis. So my recollection was that the breast feeding had to come to a stop because I had—my body would not give milk any more.

Q So it was a developing, the user interface, the icons, that menu page, was that a very intense period of hard work for you?

A That's correct. Those were difficult times.

* * *

[Cross Examination of Itay Sherman]

[2633] Q And we're looking at pictures of the Commando on the screen; Is that right?

A Yes.

MS. KREVANS: Your Honor, we would move PX 150 into evidence.

THE COURT: is it 150 or 1050?

MS. KREVANS: 150.

THE COURT: Okay That's admitted. (whereupon, Plaintiff's Exhibit number 150, having been previously marked for identification, was admitted into evidence)

BY MS. KREVANS:

Q This is a smartphone with a full set of features, Mr. Sherman?

A As far as I know, yes.

Q Very different design from the '677 and the '087?

A It is a different design.

Q It's a really different design, isn't it? Is [2634] that a yes?

A It is a different design.

Q Okay. And it works?

A It works.

Q And people buy it?

A That I don't know. But I guess so.

Q Okay. Because you didn't study the details of home people buy what phones right?

A I don't know the numbers for these phones.

Q Okay. One more.

Could we see PDX 26 51. And, Your Honor, may I approach the witness and give him physical Exhibit plaintiff's number 148?

THE COURT: Okay.

MS. KREVANS: May I also let the jury look at the Casio Commando?

THE COURT: That's fine.

BY MS. KREVANS:

Q I'll swap you, Mr. Sherman.

Now, the phone's been marked for identification as PX 148 is the Nokia Lumia, right?

A Correct.

MS. KREVANS: Your Honor, we will move for admission.

THE COURT: It's admitted.

[2635] (whereupon, Plaintiff's Exhibit number 148, having been previously marked for identification, was admitted into evidence.)

BY MS. KREVANS:

Q That's a smartphone, right?

A Yes.

Q And if you can hold that up so the jury can see it That is a smartphone that has a transparent surface on part but not all of the front; correct?

A It has a transparent front face on almost all of the front face, except for the surrounding, what you would call rim.

Q Okay. And, in fact, the front face of the Nokia Lumia is not completely flat, right? It's got a slight curve?

A On the edges, it is curving on the top and bottom edges, correct.

Q Okay. And if you hold it up so the jury can see the front of it, it has much—I would call sharper corners, I guess you would call less rounded corners than the '677 and '087; right?

A And we have the rounding is minimal.

Q So this is another fully featured smartphone [2636] with a design that is completely different design than the '677 and the '087; right?

A It is a different design.

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[2651] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. C-11-01846 LHK

APPLE INC., a California Corporation,

vs.

SAMSUNG ELECTRONICS CO., LTD., a Korean Business Entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

San Jose, California
August 15, 2012

Transcript of Proceedings before the Honorable LUCY H. KOH United States District Judge

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Official Court Reporter: Lee-Anne Shortridge, CSR, CRR Certificate Number 9595 Irene Rodriguez, CSR, CRR Certificate Number 8074

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[Direct Examination of Jin Soo Kim]

[2818] Q If we could put up on the small screen the Exhibit 684.001, just on the small screen at this point. and, Mr. Kim, I'm going to call your attention to the images of phones in the upper left of this exhibit under bar type touchscreen display.

Do You see that?

A Yeah, I can see those.

Q And just focussing on those in that upper quarter of the exhibit, are there any of those that you cannot identify as being true and correct images of Samsung phones or mockups that existed in 2006?

So at this point I'm asking that if there are any that you cannot identify as being Samsung [2819] phones or mockups that were in existence in 2006.

A No such here.

Q Okay.

Your Honor, we'd now move this into Evidence. Mr. Denison testified as to the balance of this exhibit, that they were true and correct images of Samsung devices that existed as of the dates indicated and I'd request permission to display it.

* * *

THE COURT: Overruled. Go ahead.

It's admitted.

(Whereupon, defendant's Exhibit number 684.001, having been previously marked for identification, was admitted into evidence)

* * *

[2820] BY MR. QUINN·

[2821] Q And, finally, Mr. Kim, in doing the work that you did in designing tablets for Samsung and smartphones for Samsung, at any time did you copy the work of any other smartphone manufacturer?

A I have not.

* * *

[Direct Examination of Richard Howarth]

[2839] (Whereupon, Defendant's Exhibit number 2627, having been previously marked for identification, was admitted into evidence)

BY MR. PRICE:

Q Look at the first page, this is itself report, correct, first page, right?

A Yes.

Q Look at page 25 through 26. One of the things this does is compare products, compare the products such as the F700 on page 26; correct? Do you see that?

A Just give me a second.

MR. PRICE: Your Honor, I believe there's a limiting instruction you were going to give on this document, one being that the date is wrong.

Can we go to the first page and show that.

[2840] THE COURT. Yes, you may not consider the F700 as evidence of invalidity or non-infringement.

You may only consider the F700 for alternative design and functionality.

MR. MCELHINNY. I'm sorry, your Honor. Also there was an instruction about the incorrect date.

THE COURT: Yes, that is correct. The date of this document is 2006, but that's actually an incorrect date. The correct date is 2007.

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[2966] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. C-11-01846 LHK

APPLE INC., a California Corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., a Korean business entity, SAMSUNG ELECTRONICS AMERICA, INC., a New York Corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

San Jose, California
August 16, 2012

Transcript of Proceedings before the Honorable LUCY H KOH United States District Judge

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Official court reporter: Lee-Anne Shortridge, CSR, CRR certificate number 9595 Irene Rodriguez, CSR, CRR certificate number 8074

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[Direct Examination of Michael Wagner]

[3022] Q Now, let's talk and focus on their total cost area, and if we could put up 3965 005.

And perhaps you can explain to us what you include in total costs?

A The costs that I believe are appropriate are the cost of goods sold, which are the costs to actually manufacture the infringing or allegedly infringing smartphones and tablets but also the operating expenses that are necessary to sell those phones

You can't sell a phone just because you've made it. You have to market it, you've got to sell it, you have to have developed it originally to actually make it into a product, and then you have to have an umbrella organization that organizes all of those activities

Q So perhaps you can explain then the operating expenses that you have here, sales expenses, marking, et cetera, so the jury can have an [3023] understanding as to what the nature is of those expenses?

A Starting with the first one, sales expense, as you just heard, there are 40 carriers who are customers for those products in the United States.

Samsung has to send people out to those carriers. There are all kinds of competitors for the limited sale space in the carrier stores.

So Samsung has to actively get in there and tell these carriers why they should be carrying their phones versus Apple phone or HTC phone or LG phone. So those are selling expenses.

Q Is it your understanding that it is customary that Samsung would have an employee that's devoted to one phone, like the droid charge?

A No. Normally they're selling a whole product line for the company

Q And so how are expenses then allocated for a salesman like that?

A Well, if you want to allocate to a particular product, you'd have to allocate that time because that salesperson doesn't only just sell, say, an Epic 4G. They may be selling many of the other models that are not accused in this case and you have to allocate it based on either time or some [3024] reasonable basis like revenues.

Q And if you could explain the marketing and the R&D expenses in general, and administrative?

A Marketing and general, you again have to get customers aware that you have a product. It's mainly TV advertising, billboards, magazine ads, that type of information.

And I've been watching the olympics, or I did, and every cite I would see three different Samsung ads being run promoting their Galaxy phones. That cost money, a lot of money. That cost is necessary to be successful in the marketplace.

And R&D, you have to develop this very complicated technology product. These are the most complicated consumer products in the marketplace. There's all kinds of efforts to develop the right chips, the right integrated circuits, determine what features go into it, all of those things take a lot of time and expense to do and those costs are necessary or you'd never sell a phone.

And, finally, general administrative is you, again, you need an organization that can manage all of these activities in order to sell a phone

[3025] Q Let me ask you, did Mr. Musika, in his calculations, deduct these expenses, sales, marketing, R&D?

A Not one penny.

Q No not a penny of advertising?

A No.

Q Not a penny of research and development?

A No.

Q Let me ask you, you've seen Apple's 10-K's, their financials?

A I have.

Q And do they deduct these expenses on their financials?

A They certainly do.

* * *

[3028] BY MR. PRICE:

Q Now, if you'd look at Exhibit 676, which was just admitted into evidence, that's that spreadsheet, did you look at—did you look at a spreadsheet—that was just testimony about Samsung spreadsheet that had the, the income, costs, et cetera, of the products that are at issue here.

A I did.

Q And did you—first of all, let me ask you, is—you've read Mr. Musika's report?

A I have.

Q Was this the same spreadsheet that he was using?

A He used a similar one, but the numbers that he selected have the same numbers that this one has.

Q You said they have the same numbers. Is it the spreadsheet that you get the number for income on these products?

A For revenue and costs of goods sold.

[3029] Q I'm sorry. So for revenue, that came from this; correct?

A Yes.

Q And you—you said Mr. Musika deducted costs of goods sold. Was that obtained from this same document?

A It would be the same numbers, yes.

Q And do you also get operating expenses from this document?

A You do.

Q And did Mr. Musika use any of those operating expenses from this document?

A He did not.

Q Now, did you, in your professional opinion, find the information in this to be reliable?

A I did.

Q And if we can put up Exhibit 3965.008, perhaps you can explain why using this?

A Well, the first thing I found is this is very detailed financial information. Companies don't provide this type of information in their audited financial statements. They don't give you month-by-month cost

information for individual products they sell So you can't tie this to an audited financial statement.

[3030] But it comes from a reliable acting system, and that is this S A.P. system. S.A P is the largest provider of software in the world to businesses. They have more accounting software in the major companies in the world. It has integrity.

Pricewaterhousecoopers, a firm I used to be a partner in, and so does Mr. Musika, relied on that data to provide the financial statements. So it comes from a reliable source.

And as far as the methods of allocation, they are typical that I see at companies over my career They use the same general methodology that Apple uses to allocate common costs So I have no problem with the way they allocated costs.

And then, finally, the results of this analysis are consistent with Samsung's financial statements in general.

Q Now, this spreadsheet goes over 115 pages?

A It's 115 pages that you can't even read because it's so compressed. If you really wanted to make it readable, it would probably be a couple hundred pages or more than that.

Q And which you said that the method of allocation is similar to what Apple does, how does [3031] Apple allocate its operating costs?

A When they can directly attribute it to a product line, they don't ever allocate to a product, like one of their models but they do have product line financials for the iPhone and for the iPad.

But when they allocate to those product line financials, if they can directly attribute, say, R&D engineer only worked on the iPad, they directly attribute it to it.

If it's an engineer that has common tasks, they would have some type of allocation based on either time or space or some other driver of, measure of that activity. And if they can't do any of those things, they use revenue, and that's exactly what Samsung does as well.

Q So now using the operating costs and subtracting them from the revenue to get the operating income, did you make a calculation as to what Samsung's total profits were on the phones that are at issue here?

A I did for a number of different periods of time.

* * *

[3036] Q And for the design around, could you tell us what that is, what is a design around?

A A design around is either you just design out the infringing feature if it's not a feature that's really important to the customers or you find another way of doing it.

As an example, bounce back, that gives you no indication that you're at the end of an electronic document. There's other ways to notify you of doing that So they may just use some other method to notify you that you're at the end of a file.

Q Let me ask you specifically about the design around on Apple specific designs on their patents. Would there be design arounds for that as well?

A Well, certainly. Samsung has many phones, smartphones in the marketplace that aren't accused of any trade dress or design patent infringement.

They could have just moved to those designs. They've already created them. They [3037] exist.

Samsung currently has 103 models in the United States. They come out with more than one a week. They could have come out with just a different package to put their technology into.

Q So, for example, I'm going to show you Exhibit 1018 for identification, which appears to be a Nexus S. Do you have that in front of you?

A I do.

Q And do you recognize that as a Galaxy Nexus S?

A I do.

MR. PRICE: Your Honor, move Exhibit 1018 into evidence.

THE COURT: Okay. No objection, right? It's admitted.

(Whereupon, Defendant's Exhibit number 1018, having been previously marked for identification, was admitted into evidence.)

THE COURT: Go ahead.

BY MR. PRICE:

Q So, for example, this is not an accused phone. This the kind of design that Samsung could go to?

A Right. They've actually designed this phone and this phone does not infringe any of what's

* * *

[3040] that are not asserted in this case. So that tells me that what the specific design that's at issue in this case isn't what's driving demand or driving customers from Samsung to Apple if Samsung didn't have these fine features.

Q If you're choosing—if the best design is important to you, Apple rated higher?

A They ranked higher during this time period.

Q Okay. Let's talk, then, about this group of people who bought the Samsung phones that are alleged to be infringed

What did the data tell you as to that group of people as opposed to the overall population would switch to an Apple phone?

A That's a good question That's the consumers we have to try to understand what their behavior would have been. We know in the real world they actually chose an Android phone and a Samsung phone on that platform instead of going to Apple

So you had to look at their behavior and what they need and want and desire in their phones.

Q And if you look at Exhibit 572, which is in evidence, particularly page 82, did Apple do studies of Android purchasers to see what was important to them?

[3041] A They do.

Q If you can put 572.082 and blow that up, and what percentage of sample purchasers, being an Android phones didn't consider Apple?

A 75 percent The vast majority didn't think about Apple as a realistic alternative when they made their decision

Q You see here that talks about 25 percent considered an iPhone?

A That's correct.

Q And of those two, who even considered an iPhone, you know, what kind of features were important to them?

A Well, it's the features that are listed in the rest of this chart, and none of them have anything to do with design.

They have to do with functionality and carriers and things like that and brand, nothing to do with the physical appearance of the phone that they bought.

Q For example, preferred larger screen, that was one of the items; right?

A They would, yes.

Q This GPS navigation, was that something which Apple had at the time?

[3042] A Well, at some point they did not. Eventually they did get it. But, again, the Android providers had an advantage during some parts of this period of time that we're talking about because they could offer that functionality.

Q Mr. Wagner, in this case, have you seen any analysis, any study done that asked what Android or Samsung phone owners would do if they didn't have certain features in their phone, that is, whether or not they would leave Samsung or Android for Apple because of these specific features?

A No. And that type of study could have been done, but no one has asked that question in this case. No one has given either Mr. Musika or myself the information we would need to really determine damages.

Q By the way, when you're talking about J D. Powers study, were you talking about Exhibit 69?

A If that's the March 2011 study, yes. I can't find it in these binders.

Q Okay.

Your Honor, I move Exhibit 69 into evidence. It's the first page of the J.D. powers study

THE COURT: Sure. Any objection?

[3043] MR. JACOBS: No, your Honor.

THE COURT: It's admitted.

(Whereupon, Defendant's Exhibit number 69, having been previously marked for identification, was admitted into evidence.)

BY MR. PRICE:

Q Now, you saw Mr. Musika also presented a chart, if you can look at floor B9, which showed Samsung's market share, and it kind of showed it increasing and it showed phones, Galaxy s phones.

Do you agree or disagree with the suggestion by Mr Musika that Samsung's market share increased because of anything to do with the patents or—at issue in this case?

A No This doesn't tell you anything about why that red bar is going up during that time period, and to make this even relevant to the case, you need to understand that

And Mr. Musika did no analysis about why Samsung's market share increased. He gives this impression it's because they introduced this one phone. There's a lot more to the story.

Q Such as?

A Well, first off, you shouldn't even have the [3044] line that he drew. You should have the line of the infringing phones rather than all of their phones. This is misleading. This isn't actually what would be caused by what's alleged in this case There's more information here than you should have. So that's the first problem.

The second problem is he ignores the fact that Samsung is driving technology in this space. They're known as having the fastest processor, the brightest screens, they have all kinds of functionality. They led in 3G and 4G. That's why they're doing well. It has nothing to do with what's at issue in this case.

Q And when you look at the chart that was actually in Mr. Musika's report, and if we can kind of go to that from here using, I think it's 39—3909.59, let's show the full information. 3909.59.

So if we change the scale and show this other data, what is this other data?

A The other data is what's happening to Apple's market share during the same time period.

Q And we do see peaks in Apple's market data. What's that a result of?

A Some of it has to do with seasonality, but the main thing is when does Apple introduce a new [3045] product? [3045] Unlike Samsung who introduced a new smartphone for a particular subnet of market almost weekly, Apple only introduced a new product once a year, the phone is here, and you have to wait a year.

That's why there's this incredible spike that goes up at the end, but they're not increasing market share

during most of this period because they have nothing new to sell.

Q Let's go back to 3965.010 If we can just put up the full chart now. We kind of talked about groups of features driving demand. We have a section here, Apple lacked capacity, how does that effect your opinion?

A I didn't talk about groups of features drive demand.

Q I'm sorry. Talk.

A Again, this is a very complicated decision process to buy these phones. There isn't one feature that drives demand. I do agree that design is one of the factors that you should consider.

But what you're really buying is technology. You're not buying a physical design. I've never seen a product that has more technology in it than a smartphone.

[3046] And so that's what you're looking at. And people buy phones because of the internet capability, they can do their web browsing, they want it fast Samsung has great processors to do that.

They want to do e-mail, they want to take pictures with a camera, they want to download games if they really want to make the device fun for them. It's a multifunctional device. That's what they're buying, not just design.

Q And you have Apple lacked capacity. What's that referring to?

A Well, during concern periods of Mr. Musika lost damages study, Apple couldn't sell one more of their product than they actually sold because their capacity was strained.

When the iPhone 4 came out, you saw that spike, what was happening was they couldn't meet the demand they had in the real world. They couldn't have sold another 2 million units in this period. They could not have done it. And there's plenty of documentation both from Apple and the press that indicated that. And that was between June of 2010 and September of 2010.

And as far as the tablets, again, when [3047] they introduced the iPad 2, they could not sell enough product Tim Cook, their CEO, to public investors stated we have the mother of all backlogs. How could they have sold another iPad 2 during this damages period? They couldn't even meet the demand with the competition with Samsung. So there should be no lost profits during that period of time.

Q Now, let me ask you to assume that there would be customers that would say, I don't have bounceback, I'm going to switch to an Apple.

Do you have any disagreements with Mr. Musika's calculations of the way he did profits for Apple, assuming there was a switch?

A I do. I think he's overstated the actual profits that would have been earned.

Q And if we can look at 3965.011. And the first point here, it says, uses worldwide prices instead of U.S. prices?

A What I'm talking about is Apple doesn't produce the information on a periodic basis that you would need to do the calculations in this case. This case is about the U.S. market. Apple only produces information on a product line basis on worldwide sales, but it does produce information to

* * *

[3074] Q Okay And also on that Samsung financial, it went down to the level of the operating segment telecommunications in which these phones are sold; correct?

A Yes.

Q And from that segment, you could also get revenue from the external customers and you could compare that to the overall revenue; correct?

A You can, and that's what we just did.

Q And what was that—okay. What you gave us was the—was that segment of profit margin?

A Correct, yes.

Q 15 percent. And if you went up to the entire company and compared revenue to operating income, what percentage was that?

A That's 10 percent for the overall company.

Q Okay. So 10 percent for the company, it's 15 percent for the, for telecommunications with those phones are sold, right?

A 11 to 15 percent.

Q And what you did, using more detailed information, was try to arrive at the operating income for these specific phones?

[3075] A That's true.

Q Okay. And what percentage did you have for that?

A For the—the calculation that I showed to the jury, 12 percent.

Q Okay. And so looking at Samsung's audited financials, what does that tell you about your calculation of the operating number?

A Well, when I look at all three pieces of information, mine appears to be reasonable, and it appears that telecommunications is a more profitable business to Samsung than a lot of their other businesses.

Q and what does that tell you about Mr. Musika's much, much, much higher number?

A Well, he's only looking at gross margin. I would expect that to be much larger.

MR. PRICE: Thank you.

* * *

[3387] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. C-11-01846 LHK

APPLE INC., a California Corporation,

Plaintiff,

vs.

SAMSUNG ELECTRONICS CO., LTD., a Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York Corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

San Jose, California
August 17, 2012

Transcript of Proceedings before the Honorable LUCY H. KOH United States District Judge

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Appearances on next page

Official court reporter: Lee-Anne Shortridge, CSR, CRR certificate number 9595 Irene Rodriguez, CSR, CRR certificate number 8074

* * *

[3466] Q Do you agree with Ms. Wong, the Samsung designer?

A No. 100 percent no.

Q And why do you disagree?

A Because on a touchscreen, what's important is that there's a target for your finger, and that doesn't need to be enclosed in a fence.

If you have something to aim at, and at times it might be an advantage just to have more space separating those targets.

But it's an option, not a requirement.

Q So just so we're clear, can you tell the jury whether, in your view as a designer, it is or is not necessary for icons, on a touchscreen on a smartphone, to be enclosed in a container?

A No .

[3467] Q It's not necessary?

A Not necessary.

Q If—can you tell us whether or not, if a designer chose to enclose icons in a container, the container necessarily has to be generally rectangular in shape?

A That is not necessary, no.

Q Why is that not necessary?

A Because if you choose to use a container, which I think frequently is a way, a metaphor for a real world button, which could be a good thing that people are familiar with pressing a button, but just like in the world, there's all kinds of ovals and squares and circles on blender and toasters and microwaves. Any of those could be rendered on a touchscreen.

Q So you're saying the metaphorical button, it could be in a variety of shapes?

A Yes.

Q And if the designer of a screen for a touchscreen display for a smartphone did decide to use a container of some shape or other, does it have to be colored?

A No. Sometimes black and white is strong and terrific.

[3468] Q Okay. Let's talk about one particular icon for a moment, the phone icon.

Can you tell us whether or not a designer who's designing a touchscreen for a smartphone, when they get to the phone icon, has to have a picture of a telephone handset on it?

A No, not necessary.

Q What other kinds of things could they do?

A Well, it could be a pad of numbers; it could be a shape of a generic phone; could be—I'm sure there's even things that we haven't used that might work that would mean communicate with a phone because it's really about making a call, not a particular physical object.

Q Let's say they did try to use, decide to use a picture, some kind of graphic of a handset. Does it have to be that retro style you talked about last time you were here?

A I think it could be stylized so it isn't so exactly in the shape of that retro phone.

Q And does it have to be in a particular position if you chose to use a handset?

A It doesn't have to be

Q Okay. I'd like to show you a smartphone called the Pantech Hotshot which has been marked as [3469] Exhibit PX 2277.

And, your Honor, this is a rebuttal Exhibit, and although these were not subject to the 200 limit, in order to respect the limit, we're interesting to take an exhibit off of our original list, so we won't go over 200 by marking this.

THE COURT: Okay.

BY MS. KREVANS:

Q Okay. What are we looking at right now on the screen, Dr. Kare?

A This is a smartphone application screen with—it's interesting because there's a mix of icon shapes.

At the top, there's four rows of three icons, and at the bottom, there's four icons. So it's kind of a different grid on top and bottom.

Q Okay.

MS. KREVANS: Your Honor, we would move PX 2277, the Pantech Hotshot into evidence.

THE COURT: Any objection?

MR. VERHOEVEN: No objection, your Honor.

THE COURT: It's admitted.

(Whereupon, plaintiff's Exhibit number 2277, having been previously marked for identification, was admitted into [3470] evidence.)

* * *

BY MS. KREVANS:

Q Can you tell us whether or not, Dr. Kare, the screen display on the Pantech Hotshot has the consistent icon style that Ms. Wong talked about?

* * *

THE WITNESS: The icons on—at the top of this screen don't have a consistent shape. They're—there's a mix of shapes.

BY MS. KREVANS:

Q Okay.

A So they're not in containers, and, you know, they're round, puzzle shaped.

Q What do you see in terms of the color choices that have been made with respect to the Pantech Hotshot?

A You know, they have some primary colors and [3471] they're—the icons at the top have colors, but the icons at the bottom of the screen where there's the four in a row are not color, and they're treated differently than the icons at the top.

Q Okay. Let me ask you, Dr. Kare, I know you're leaning into the screen so you can see it, if you can pull the mike a little closer to your mouth so we can all hear you, that would be great.

A Sorry.

Q What's the phone icon on the Pantech Hotshot?

A It's labeled keypad and it's a little grid of numbers.

Q Let me show you another smartphone. This one is called the Blackberry Storm. It's been marked for identification as Exhibit PX 2278.

MR. VERHOEVEN Your Honor, this is Mr. Verhoeven. You can't see me because of all the people.

For the record, we're showing these images and I think they're not casting any aspersions, but we're going to a specific screen on each of these phones and we should probably put what screen they're showing in the record.

MS. KREVANS: Your Honor, I thought I had done that.

[3472] Q Let me ask, Dr Kare, are we looking at the applications screens of each of those phones, Dr. Kare?

A Yes.

MS. KREVANS: Your Honor, we would move this Exhibit 2278.

We would move 2278, which is the BlackBerry Storm into evidence, and, again, we will take one Exhibit off of our original list to make room for this.

MR. VERHOEVEN: No objection, your Honor.

THE COURT: All right. That's admitted.

(Whereupon, defendant's Exhibit number 2278, having been previously marked for identification, was admitted into evidence.)

BY MS. KREVANS:

Q Can you tell the jury, with respect to the BlackBerry storm, Dr Kare, whether or not this application screen display has the consistent icon style described by Ms. Wong?

A No, it doesn't.

Q What does it have?

A It has almost monochromatic icons with some flat color accents.

[3473] So I think what jumps out is the icons are irregular shaped, there's not much color, they're all stylized, so that's what unifies those icons.

They are on really subtle button backgrounds that are sharp cornered rectangles that abutted each other with no space in between.

Q Okay. Going back to the Hotshot for a moment, are there containers on the Hotshot screen?

A No.

Q Okay. Let me show you one more.

A They're not consistent—just to be really clear, there's not a consistent container shape.

Q Okay. Where do you see containers?

A There are a couple icons, My Verizon and Media Center, that are rectangular that look more like buttons. But that's not the majority and it's not consistent.

Q Okay. Let's look at one more, and this is PX 158-A, which is in evidence.

So if we could switch back, Thomas, to your screen.

Dr. Kare, can you tell the jury whether or not the application screens of the BlackBerry Torch 9850, which is shown on 158-A, have the [3474] consistent icon style talked about by Ms Wang?

A No.

Q Do they have containers?

A No.

Q Just looking at these two and thinking about the other two that we just saw, the Pantech Hotshot application screen and the BlackBerry Storm, do any of these screen displays have designs that are substantially similar to the D'305 patent design and the iPhone home screen?

A No.

* * *

[Cross Examination of Susan Kare]

[3608] Q This is a slide I asked you about last time you testified; right?

[3609] A Correct.

Q And on the left we have these prior art references and we have the LG Prada, do you see that?

A I see that.

Q All these prior art devices have a rectangular shape with rounded corners; right?

A That's what I said last time, use.

Q The use of a rectangular shape with rounded corners for an electronic device, that's not something Apple owns, is it, sir?

A That general description certainly is not. The specific design that they produced is.

Q That element is not something that Apple owns, is it, sir?

A I'm not sure I understand the question.

Q Rectangular shape with rounded corners, does Apple own that?

A Apple owns a—the design of the phone with a rectangular shape as depicted in their patent with rounded corners.

* * *

[3712] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. C-11-01846 LHK

APPLE INC., a California Corporation,

Plaintiff,

vs.

SAMSUNG ELECTRONICS CO., LTD., a Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York Corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

San Jose, California
August 20, 2012

Transcript of Proceedings before the Honorable LUCY H. KOH United States District Judge

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Official court reporter: Lee-Anne Shortridge, CSR, CRR certificate number 9595 Irene Rodriguez, CSR, CRR certificate number 8074

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[Samsung Oral Objections To Jury Instructions]

[3912] We also object to the failure of—to instruct on a causation requirement along the lines of what we had proposed in our instruction number 42

* * *

[3915] MR. ZELLER. And then for reasons we've already talked about previously, Your Honor, both including on the Daubert motion and prior motions, we do object to the lack of an apportionment instruction.

And also we object to not including the language that we proposed, because we don't think it's a correct statement of the law that just because the design, as Apple alleges, applied to the front face of these articles, the outside of it, that they can then recover for the underlying [3916] technology.

And, in fact, that's the exact kind of situation that the *Piano* cases found were a windfall, and we briefed this previously, your honor.

THE COURT: I know there's no apportionment for Samsung profits in design patent cases.

I'm assuming there is apportionment if Apple is asking for Apple's profits. Is that right?

MR. ZELLER: Absolutely.

THE COURT: Yeah.

MR. ZELLER: And also, Your Honor, what I'm talking about with the *Piano* cases, just to be clear, there's not apportionment. It's actually the definition of what the article is.

And in the *Piano* cases, basically the article was the outside of the piano and the recovery that was given

was for all of the profits from the sale of the piano, and the court said that was essentially a windfall because the workings of it, it's not apportionment, it's rather that was the article to which the design was applied That's what the profits have to be from

[3917] THE COURT Okay

MR ZELLER With respect to Number 41—excuse me, Number 42 1 on design patent damages, profits, we would object to the omission of our proposed instruction

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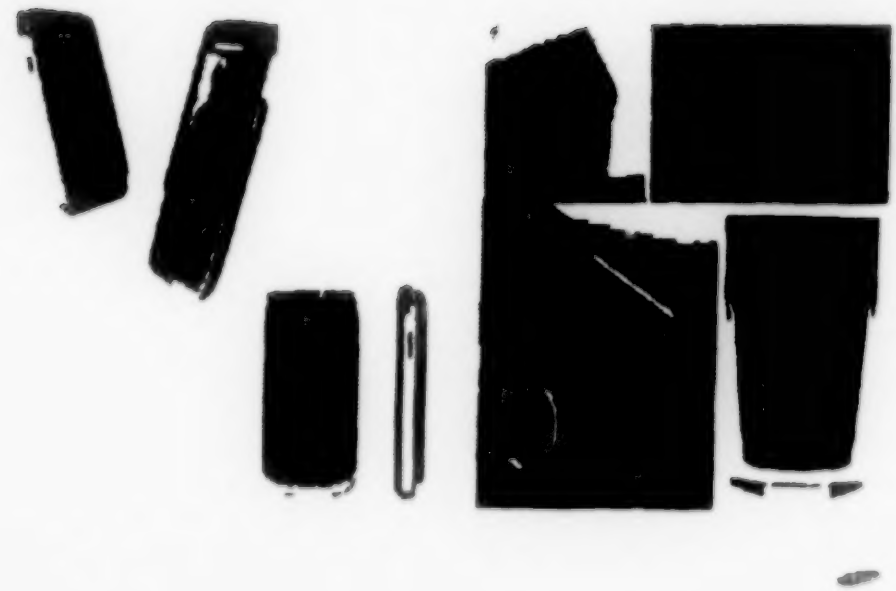
EXHIBIT L TO SAMSUNG'S PROFFER OF WITNESS TESTIMONY AND EXHIBITS MPCP PROJECT 2006

(Filed 8/21/12)



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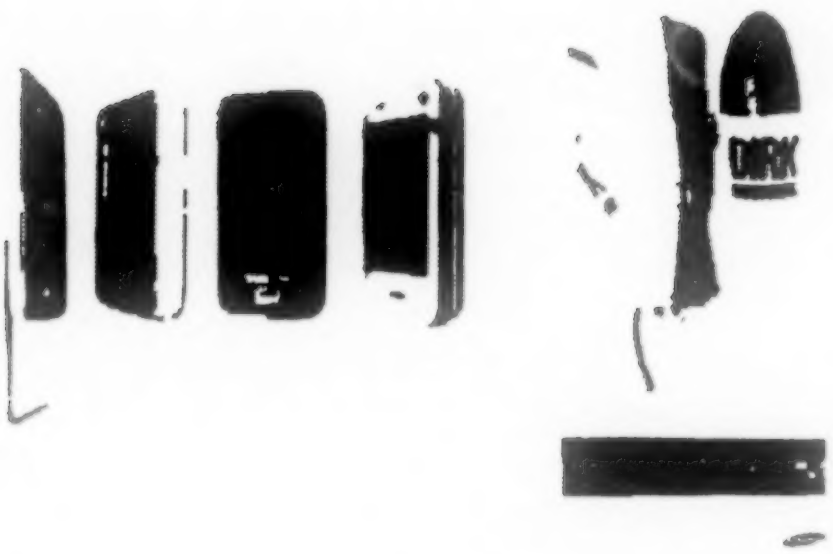

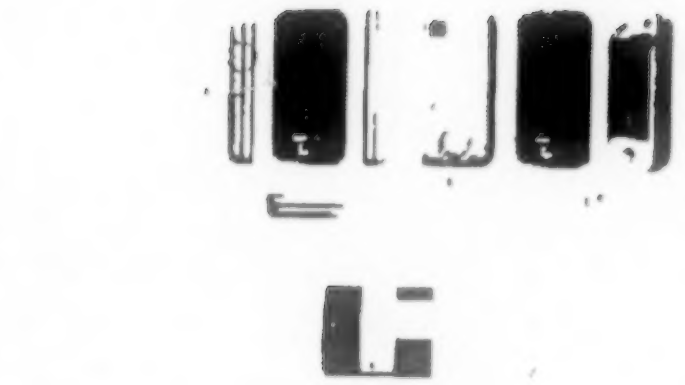

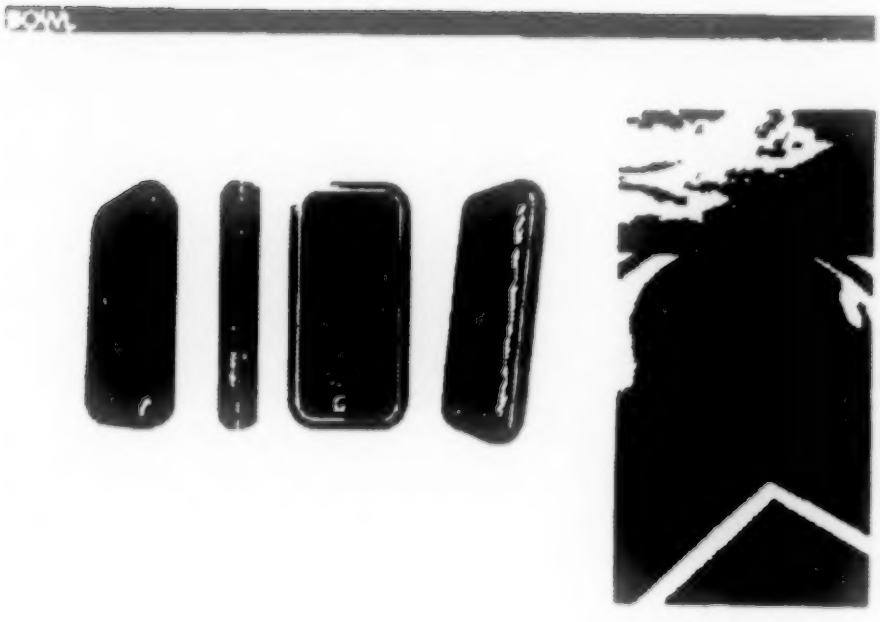

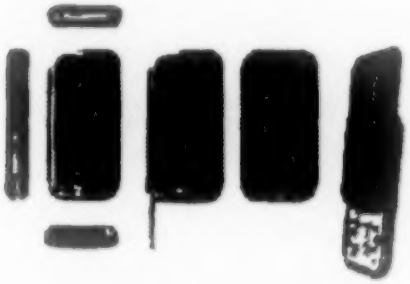

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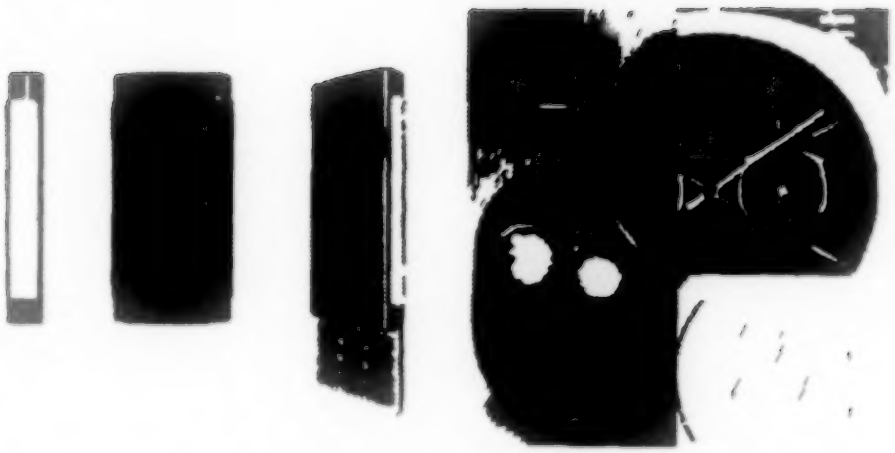

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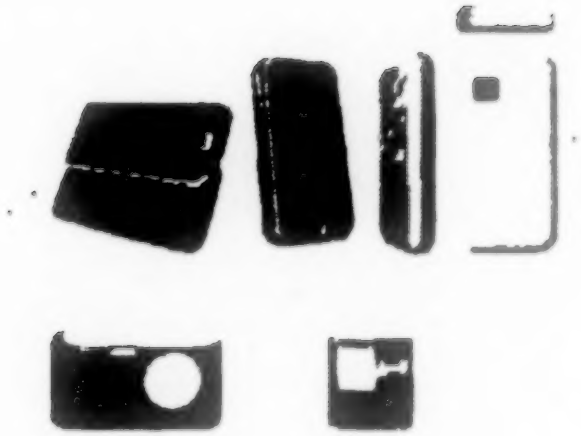

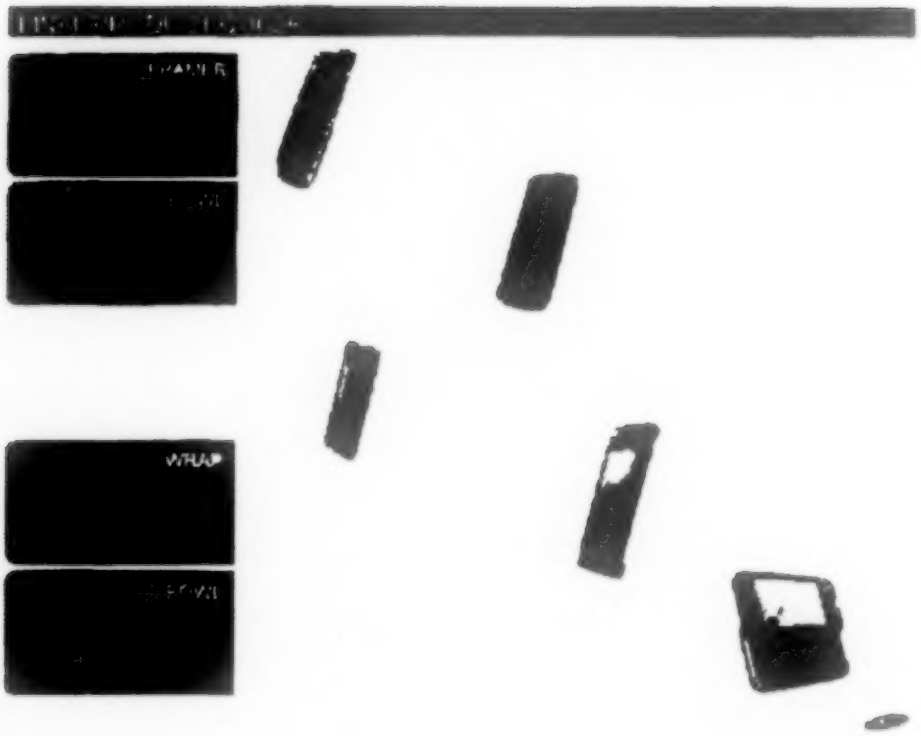

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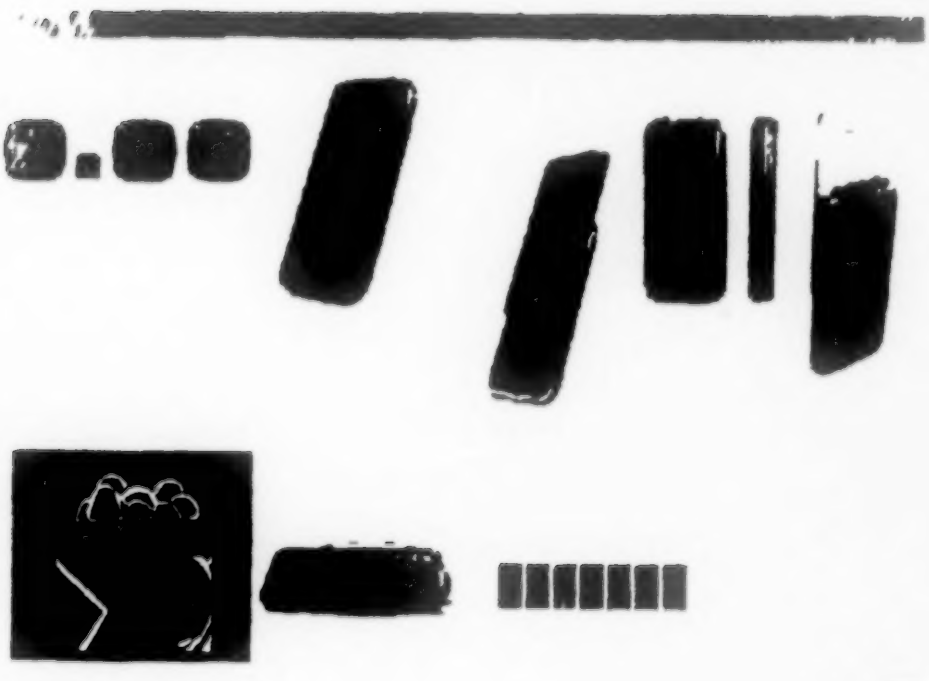
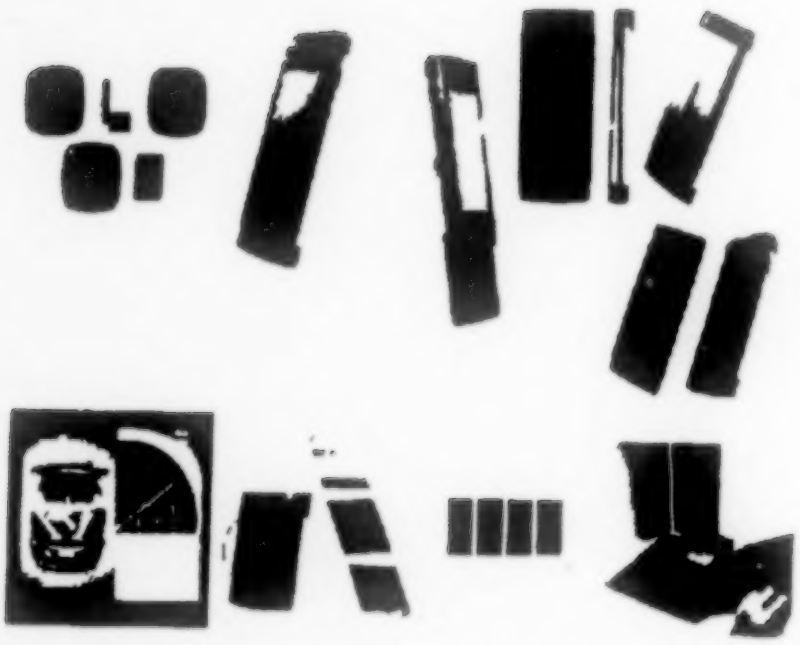


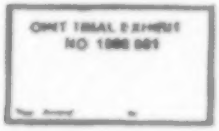
MRAP



Q BOW-

EXHIBIT P TO SAMSUNG'S PROFFER OF WITNESS TESTIMONY AND EXHIBITS KOREAN DESIGN REGISTRATION 30-0452985 S2

(Filed 8/21/12)



CERTIFICATION OF TRANSLATION

I certify that the Korean to English translation of the Korean document entitled *KR30-0452985 (KR30-2006-00507696)* is and accurate and complete rendering of the contents of the source document to the best of my knowledge and ability I further certify that I am a qualified professional translator familiar with both languages with more than twenty years of experience in Korean to English translation of various legal, technical or business documents including a number of legal evidentiary documents submitted to various courts in the United States

December 23, 2011

/s/ Alex N Jo

Alex N Jo, Translator

Registered Design 30-0452985 S2

[LOGO]

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(24) Registration Date	August 17, 2007

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(51) Int Cl	14-03
(21) Application No	30-2006-0050769
(22) Application Date	December 20, 2006

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Examiner HyoSeok Han

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(54) Portable Phone

Physical Target Object of the Design

Portable phone

Description of the Design

1 It is made of metals and synthetic resin

2 It has a digital camera on top of the front surface

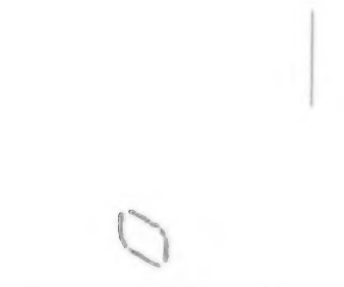
3 As illustrated in Informational Figure I, the key pad is aligned in the same manner as a QWERTY keyboard, allowing the user to use it in a horizontal direction

Main Points of the Creative Design Contents

Taking a folder type as a basic form factor, the present design emphasizes a smooth curve on the whole and expresses much simpler and more elegant sense of aesthetics

Registered Design 30-0452985 S2

[Perspective View]



[Frontal View]

Registered Design 30-0452985 S2

{Rear View}

{Left Lateral View}

Registered Design 30-0452985 S2

[Right Lateral View]

[Plan View]

[Bottom View]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No.: 11-CV-01846-LHK

APPLE, INC., a California corporation,

Plaintiff and Counterdefendant,

v.

SAMSUNG ELECTRONICS CO., LTD., A Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company

Defendants and Counterclaimants.

Dated: August 21, 2012

FINAL JURY INSTRUCTIONS

/s/ Lucy H. Koh
LUCY H KOH
United States District Judge

FINAL JURY INSTRUCTION NO. 53
DESIGN PATENT DAMAGES—BURDEN OF PROOF

I will instruct you about the measure of damages for infringement of Apple's design patents. By instructing you on damages, I am not suggesting which party should win on any issue.

If you find that Samsung Electronics America, Samsung Telecommunications America, and/or Samsung Electronics Company infringed any valid Apple design patent, you must then determine the money damages to award Apple. The amount of those damages must be adequate to compensate Apple for the infringement You should keep in mind that the damages you award are meant to compensate the patent holder and not to punish an infringer.

In relation to design patents, Apple can elect to prove either actual damages, known as compensatory damages, or it may elect to prove the defendant's profits as its measure of potential recovery with respect to the sale of each unit of an infringing product. As compensatory damages, Apple may prove either its own lost profits, or a reasonable royalty for the design patent. Apple is not entitled to recover both compensatory damages and defendant's profits on the same sale.

Apple has the burden to prove that Apple's calculation of damages is correct by a preponderance of the evidence. While Apple is not required to prove its damages with mathematical precision, it must prove them with reasonable certainty Apple is not entitled to damages that are remote or speculative

FINAL JURY INSTRUCTION NO. 54
DESIGN PATENT INFRINGEMENT
DAMAGES—DEFENDANT'S PROFITS

In this case, Apple seeks Samsung Electronics Company's, Samsung Electronics America's, and Samsung Telecommunications America's profits from sales of products alleged to infringe Apple's design patents. If you find infringement by any Samsung defendant and do not find Apple's design patents are invalid, you may award Apple that Samsung defendant's total profit attributable to the infringing products.

The "total profit" of Samsung Electronics Company, Samsung Electronics America and/or Samsung Telecommunications America means the entire profit on the sale of the article to which the patented design is applied, and not just the portion of profit attributable to the design or ornamental aspects covered by the patent. "Total profit" does not include profit attributable to other products that may be sold in association with an infringing article embodying the patented design.

If you find infringement by any Samsung defendant, Apple is entitled to all profit earned by that defendant on sales of articles that infringe Apple's design patents. Profit is determined by deducting certain expenses from gross revenue. Gross revenue is all of the infringer's receipts from the sale of articles using any design found infringed. Apple has the burden of proving the infringing defendant's gross revenue by a preponderance of the evidence.

Expenses can include costs incurred in producing the gross revenue, such as the cost of the goods. Other costs may be included as deductible expenses if they

are directly attributable to the sale or manufacture of the infringing products resulting in a nexus between the infringing products and the expense. Samsung has the burden of proving the deductible expenses.

FINAL JURY INSTRUCTION NO. 55 DESIGN PATENT DAMAGES—LOST PROFITS

Apple may alternatively recover compensatory damages in the form of lost profits. As previously explained, Apple may not recover both Samsung's profits and compensatory damages on each sale of an infringing product. In assessing Apple's right to recover lost profits for Samsung Electronics Company's, Samsung Electronics America's, and Samsung Telecommunications America's infringement of its design patents, you should apply the same rules I already explained in the context of lost profits for infringement of Apple's utility patents. Those Instructions are set out in Jury Instruction Nos. 36, 37, 38, and 39.

Wherever in those Instructions I referred to Apple's utility patents, you should now focus on Apple's design patents. Wherever in those Instructions I referred to the patented invention, you should now focus on the patented design. Wherever in those Instructions I referred to patented products or products covered by a patent claim, you should now focus on products or articles that use or embody the patented design.

FINAL JURY INSTRUCTION NO. 56 DESIGN PATENT DAMAGES—REASONABLE ROYALTY

If Apple has not proved its claim for lost profits or has not proved its claim to Samsung's profits, then Apple should be awarded a reasonable royalty for all infringing sales by Samsung Electronics America, Samsung Telecommunications America, and/or Samsung Electronics Company. In no event should the

damages you award Apple for design patent infringement be less than a reasonable royalty.

The definition of a reasonable royalty for design patent infringement is the same as the definition I explained to you in Jury Instruction No. 41 for utility patent infringement. However, wherever in that Instruction I referred to the patented invention or a utility patent, you should now focus on the design patents or patented designs.

[1] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

[Filed 08/24/12]

Case No. 11-CV--01846 LHK

APPLE INC., a California Corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., a Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York Corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

SAMSUNG ELECTRONICS CO., LTD., a Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York Corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Counterclaim-Plaintiffs.

v.

APPLE INC., a California Corporation,

Counterclaim-Defendant.

Amended
Verdict Form

We, the jury, unanimously agree to the answers to the following questions and return them under the instructions of this Court as our verdict in this case.

* * *

[6] 5. For each of the following products, has Apple proven by a preponderance of the evidence that Samsung Electronics Co (SEC) and/or Samsung Telecommunications America (STA) has infringed the D'677 Patent?

(Please answer in each cell with a "Y" for "yes" (for Apple), or with an "N" for "no" (for Samsung). Do not provide an answer for any cell that is blacked out.)

Accused Samsung Product	Samsung Electronics Co., Ltd	Samsung Telecommunications America, LLC
Fascinate (JX 1013)	Y	Y
Galaxy Ace (JX 1030)	N	[redacted]
Galaxy S (i9000) (JX 1007)	Y	[redacted]
Galaxy S 4G (JX 1019)	Y	Y
Galaxy S II (AT&T) (JX 1031)	Y	Y
Galaxy S II (i9100) (JX 1032)	Y	[redacted]

Galaxy S II (T-Mobile) (JX 1033)	Y	Y
Galaxy S II (Epic 4G Touch) (JX 1034)	Y	Y
Galaxy S II (Skyrocket) (JX 1035)	Y	Y
Galaxy S Showcase (i500) (JX 1017)	Y	Y
Infuse 4G (JX 1027)	Y	Y
Mesmerize (JX 1015)	Y	Y
Vibrant (JX 1010)	Y	Y

6. For each of the following products, has Apple proven by a preponderance of the evidence that Samsung Electronics Co. (SEC) and/or Samsung Telecommunications America (STA) has infringed the D'087 Patent?

(Please answer in each cell with a "Y" for "yes" (for Apple), or with an "N" for "no" (for Samsung). Do not provide an answer for any cell that is blacked out.)

Accused Samsung Product	Samsung Electronics Co., Ltd	Samsung Telecommunications America, LLC
Galaxy S (i9000) (JX 1007)	Y	[redacted]

Galaxy S 4G (JX 1019)	Y	Y
Galaxy S II (AT&T) (JX 1031)	N	N
Galaxy S II (i9100) (JX 1032)	N	[redacted]
Galaxy S II (Epic 4G Touch) (JX 1034)	N	N
Galaxy S II (Skyrocket) (JX 1035)	N	N
Infuse 4G (JX 1027)	N	N
Vibrant (JX 1010)	Y	Y

7. For each of the following products, has Apple proven by a preponderance of the evidence that Samsung Electronics Co. (SEC) and/or Samsung Telecommunications America (STA) has infringed the D'305 Patent?

(Please answer in each cell with a "Y" for "yes" (for Apple), or with an "N" for "no" (for Samsung). Do not provide an answer for any cell that is blacked out.)

Accused Samsung Product	Samsung Electronics Co., Ltd	Samsung Telecommunications America, LLC
Captivate (JX 1011)	Y	Y
Continuum (JX 1016)	Y	Y
Droid Charge (JX 1025)	Y	Y
Epic 4G (JX 1012)	Y	Y
Fascinate (JX 1013)	Y	Y
Galaxy S (i9000) (JX 1007)	Y	[redacted]
Galaxy S 4G (JX 1019)	Y	Y
Galaxy S Showcase (i500) (JX 1017)	Y	Y
Gem (JX 1020)	Y	Y
Indulge (JX 1026)	Y	Y
Infuse 4G (JX 1027)	Y	Y
Mesmerize (JX 1015)	Y	Y
Vibrant (JX 1010)	Y	Y

* * *

[9] 10. If you answered "Yes" to any of Questions 1 through 9, and thus found that any Samsung entity has infringed any Apple patent(s), has Apple proven by clear and convincing evidence that the Samsung entity's infringement was willful?

(Please answer in each cell with a "Y" for "yes" (for Apple), or with an "N" for "no" (for Samsung).)

Apple Utility and Design Patents	Samsung Electronics Co., Ltd	Samsung Electronics America, Inc	Samsung Telecommunications America, LLC
'381 Patent (Claim 19)	Y	Y	Y
'915 Patent (Claim 8)	Y	Y	Y
'163 Patent Claims 50)	Y	Y	Y
D'677 Patent	Y	[redacted]	Y
D'087 Patent	N	[redacted]	N
D'305 Patent	Y	[redacted]	Y
D'889 Patent	N	N	N

11. Has Samsung proven by clear and convincing evidence that Apple's asserted utility and/or design patent claims are invalid?

'381 Patent (Claim 19)	Yes__ (for Samsung)	No ✓ (for Apple)
'915 Patent (Claim 8)	Yes__ (for Samsung)	No ✓ (for Apple)
'163 Patent Claims 50)	Yes__ (for Samsung)	No ✓ (for Apple)
D'677 Patent	Yes__ (for Samsung)	No ✓ (for Apple)
D'087 Patent	Yes__ (for Samsung)	No ✓ (for Apple)
D'305 Patent	Yes__ (for Samsung)	No ✓ (for Apple)
D'889 Patent	Yes__ (for Samsung)	No ✓ (for Apple)

* * *

[15]

DAMAGES TO APPLE FROM SAMSUNG (IF APPLICABLE)

22. What is the total dollar amount that Apple is entitled to receive from Samsung on the claims on which you have ruled in favor of Apple?

$1,049,343,540.00

8/29/12

23. For the total dollar amount in your answer to Question 22, please provide the dollar breakdown by product.

Accused Samsung Product	Amount
Captivate (JX 1011)	80,840,162
Continuum (JX 1016)	16,399,117
Droid Charge (JX 1025)	50,672,869
Epic 4G (JX 1012)	130,180,896
Exhibit 4G (JX 1028)	1,081,820
Fascinate (JX 1013)	143,539,179
Galaxy Ace (JX 1030)	0
Galaxy Prevail (JX 1022)	57,867,383
Galaxy S (i9000) (JX 1007)	0
Galaxy S 4G (JX 1019)	73,344,668
Galaxy S II (AT&T) (JX 1031)	40,494,356
Galaxy S II (i9100) (JX 1032)	0
Galaxy S II (T-Mobile) (JX 1033)	83,791,708
Galaxy S II (Epic 4G Touch) (JX 1034)	100,326,988
Galaxy S II (Skyrocket) (JX 1035)	32,273,558
Galaxy S Showcase (i500) (JX 1017)	22,002,146

Galaxy Tab (JX 1036)	1,966,691
Galaxy Tab 10.1 (WiFi) (JX 1037)	833,076
Galaxy Tab 10.1 (4G LTE) (JX 1038)	0
Gem (JX 1020)	4,075,585
Indulge (JX 1026)	16,011,184
Infuse 4G (JX 1027)	44,792,974
Intercept (JX 1009)	0
Mesmerize (JX 1015)	53,123,612
Nexus S 4G (JX 1023)	1,828,297
Replenish (JX 1024)	3,350,256
Transform (JX 1014)	953,060
Vibrant (JX 1010)	89,673,957

* * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

[Filed 11/11/13]

Case No.: 11-CV-01846-LHK

APPLE, INC., a California corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., A Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company

Defendants.

SUPPLEMENTAL ORDER REGARDING APPLE'S OBJECTIONS TO SAMSUNG'S OPENING SLIDES

Apple has objected to certain slides that Samsung plans to use in its opening statement. *See* ECF No. 2671. After considering Apple's objections and Samsung's responses, *see* ECF No. 2669, the Court issued an order ruling on all but one set of Apple's objections, *see* ECF No. 2696 The remaining set of objections relates to Samsung's slides that reference certain exhibits related to a Samsung prototype phone called the F700. For the 2012 trial, because Samsung failed to disclose its invalidity theories based on the F700 in a timely manner, the Court excluded certain

evidence and argument related to the F700 to the extent Samsung sought to use it to show independent development. *See* ECF Nos. 1267 at 3 ¶ 3; 1456 at 2 (sustaining objections as to Samsung's proposed opening slides 16-19); ECF No 1510 at 2 (denying motion for reconsideration).

However, the Court allowed Samsung to introduce the F700 during the 2012 trial as evidence of alternative designs and functionality. ECF No. 1690 at 9 ("Samsung has generally been permitted to rely on the F700 for alternative design and functionality purposes . . . ."); *see also* ECF No. 1947 at 7 (Exh. DX 526: "Do not consider as evidence of invalidity or non-infringement. However, you may consider as evidence of alternative designs and functionality."). The slides currently at issue refer to the same evidence and argument of independent development that the Court excluded in the 2012 trial. For the reasons set forth below, the Court SUSTAINS Apple's objections with respect to those slides.

DISCUSSION

Samsung's F700 handset was a prototype phone with a rectangular shape, rounded corners, and a rectangular display screen. Samsung apparently had various internal names for the F700. One of the designers of the F700, Hyoung Shin Park, testified that Samsung referred to it as "Bowl" and "Q Bowl" to "express[] the feeling of containing water in a bowl." ECF No. 1443 at 15:1-16:2. Apple contends, without dispute, that Samsung also referred to the F700 as "Vessel," "Slide," and "iReen." ECF No. 1441 at 2. Ms. Park is a named inventor of a Korean design patent assigned to Samsung (KR30-0452985) on which the F700 was allegedly based. *See* ECF No. 2255-19 at 38-39. The slides currently under review use these

internal names for the F700 and also reference KR'985.

Magistrate Judge Grewal struck the expert report of Samsung's expert Itay Sherman to the extent it relied on Samsung's F700 handset to support the obviousness of the D'677 patent. *See Apple, Inc. v. Samsung Elecs. Co., Ltd.*, 2012 WL 2499929, *3 (June 27, 2012); *see also* ECF No. 2255-19 at 38-40, 57-58 (portions of Sherman's expert report referencing the F700). This Court affirmed that order, concluding that "Judge Grewal did not clearly err in finding that Samsung's disclosure of prior art references, witnesses, and documents in discovery was not sufficient to 'make known' to Apple, Samsung's theories of invalidity . . . ." *Apple, Inc. v. Samsung Elecs. Co., Ltd.*, 2012 WL 3155574, *5 (Aug. 2, 2012); *see id.* ("Samsung's response to Apple's contention interrogatory . . . [seeking] disclosure of Samsung's theories of anticipation, obviousness, and other grounds of invalidity, contained 595 prior art references comprising 5,600 pages of documents. It would have been difficult, if not impossible, for Apple to have known which prior art references and evidence were intended to support which theory . . . .").

Notwithstanding Judge Grewal's ruling, Samsung sought to use slides in its opening statement in the 2012 trial that relied on exhibits related to the F700. *See* ECF No. 1441 at 2 (Apple's objections to slides 11-19). This Court sustained Apple's objections to those slides based on Judge Grewal's order. *See* ECF No. 1440 at 2. Samsung moved for reconsideration, arguing that a subset of those slides went to Samsung's argument that it independently developed the features at issue and therefore Samsung should have been able to use them to rebut Apple's allegations of

copying. *See* ECF No. 1463 at 2. This Court denied Samsung's motion. *See* ECF No. 1510 at 2. Also during the 2012 trial, this Court excluded Ms. Park's testimony, which Samsung proffered in part to rebut Apple's allegations of copying or willfulness. *See* ECF No. 1690 at 8-9.

The Court excluded Samsung's evidence related to the alleged independent development of the F700 because it was concerned the jury was likely to consider that evidence for purposes of invalidity, a purpose that had been excluded by Judge Grewal. *Id.* at 9. The Court also was concerned that the jury would impermissibly use evidence of Samsung's independent design of the F700 as a basis to conclude that Apple's D'677 patent was obvious. It is well settled that "[i]ndependently made, simultaneous inventions, made 'within a comparatively short space of time,' are persuasive evidence that the claimed apparatus 'was the product only of ordinary mechanical or engineering skill.'" *Geo. M. Martin Co. v. Alliance Machine Sys. Int'l LLC*, 618 F.3d 1294, 1305 (Fed. Cir. 2010) (quoting *Concrete Appliances Co. v. Gomery*, 269 U.S. 177, 184 (1925)). That concept applies equally to design patents. See 35 U.S.C. § 171 ("The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided."); *see also Apple, Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1330 (Fed. Cir. 2012) (relying on the perspective of "a designer of ordinary skill who designs articles of the type involved" to determine obviousness) (internal quotation marks omitted). This concept reflects a common sense understanding that a claimed invention is more likely to be obvious if a number of people reached the same result under similar circumstances. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 420 (2007) ("When there is

a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp.").

As the preceding discussion makes clear, the Court previously excluded evidence related to the F700 to the extent Samsung sought to present it to prove independent development of the patented features. Because Samsung was precluded from using this evidence for this purpose in the 2012 trial, it cannot use it for the same purpose in this trial either.

The Court has reiterated that this limited damages retrial must hew as close as possible to the 2012 trial in order to merely correct for the 2012 jury's use of improper notice dates. *See, e.g.*, ECF No. 2369 at 2; ECF No. 2316 at 2-3. Accordingly, the Court has generally barred the parties from attempting to present exhibits or witnesses that were not timely disclosed and admissible at the 2012 trial. *See* ECF No. 2575 at 2. Samsung has not presented a compelling reason to break from that general rule here. To the contrary, allowing Samsung's evidence of independent development could be more prejudicial to Apple in the retrial than it was in the first case, as doing so runs the risk of inviting this jury to question the validity of Apple's D'677 patent, an issue that the 2012 jury decided against Samsung.

The prejudice to Samsung of maintaining this Court's exclusion of its independent-development arguments related to the F700 is low. Samsung was forced to rebut Apple's allegations of copying in the 2012 trial without reference to this evidence, and Samsung was not expecting to be able to use it in the retrial. *See* ECF No. 2486-5 at 22 (Samsung's exhibit

list, including the exhibits referenced in the disputed slides as those "not intended to be used at trial"). Moreover, Samsung's inability to use this information is a direct consequence of its failure to timely disclose its invalidity theories leading up to the 2012 trial. Finally, the Court notes that the probative value of this evidence is low, as it is only indirectly related to the purpose for which Samsung seeks to present it, namely, to rebut evidence of demand for the patented product, the iPhone.

Samsung argues that sustaining Apple's objection to these slides is inconsistent with this Court's 2012 ruling on Apple's motion in limine, in which the Court excluded certain internal Samsung documents but held that they were "admissible for other purposes, including to rebut an allegation of copying." ECF No. 1267 at 3. However, that ruling was limited to anticipation under § 102, for which independent development has minimal relevance. On the other hand, the Court excluded the F700 independent development theory when concerned about the danger that the independent development theory would confuse the jury about obviousness. Samsung also notes that the KR '985 reference is not prior art. The Court does not see this fact as making the introduction of KR '985 less confusing for the jury. To the contrary, it is likely to introduce more confusion in this retrial, as the retrial jury will not otherwise need to be introduced to the concept of invalidity and priority dates. Moreover, the only witness Samsung has offered to sponsor KR '985 is Ms Park. *See* ECF No. 2523 at 47-53 (Samsung's proffer). The Court invited the parties to reach an agreement regarding the admission of Ms. Park's testimony, *see* ECF No 2645 at 2; 11/5/13 Hr'g Tr. at 37, but as of yet they have not

done so. Without that agreement, Ms. Park's testimony on this subject is inadmissible.

However, as stated above, the Court allowed Samsung to introduce the F700 during the 2012 trial as evidence of alternative designs and functionality and will do so again in the retrial. *See* ECF No. 1690 at 9 ("Samsung has generally been permitted to rely on the F700 for alternative design and functionality purposes . . . ."); see also ECF No. 1947 at 7 (Exh. DX 526: "Do not consider as evidence of invalidity or non-infringement. However, you may consider as evidence of alternative designs and functionality.").

CONCLUSION

For the foregoing reasons, Apple's objections to Samsung's opening slides 34, 41, 52, 53, 61, 63, 70, 93, 105, 115, 134, 160, 161, and 163 are SUSTAINED. However, as in the 2012 trial, the Court will allow Samsung to introduce the F700 to support Samsung's theories of acceptable noninfringing alternatives during the retrial. *See* ECF No. 1690 at 9; *see also* ECF No. 1947 at 7.

IT IS SO ORDERED.

November 11, 2013

/s/ Lucy H. Koh
LUCY H. KOH
United States District Judge

[559] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

C-11-01846 LHK

APPLE, INC., a California corporation,

Plaintiff,

vs.

SAMSUNG ELECTRONICS CO., LTD., A Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company

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San Jose, California
November 14, 2013

Volume 3
Pages 559-809

Transcript of proceedings before the Honorable LUCY H. KOH United States District Judge

Appearances on next page

Official court reporter. Lee-Anne Shortridge, CSR, CRR Certificate number 9595

Proceedings recorded by mechanical stenography transcript produced with computer

* * *

[Direct Examination of Julie Davis]

MS. KREVANS: Your Honor, we'd offer Ms. Davis as an expert witness on the assessment of the appropriate damages for the patent infringement in this case.

THE COURT: Any additional voir dire or objection?

MR. PRICE: No, Your Honor, no objection.

THE COURT: All right. So certified

Go ahead, please.

BY MS. KREVANS:

Q. Could you explain to the jury the specific assignment that you were asked to take on in this case?

A. As I mentioned, I was asked to determine the amount of damages that Samsung should pay to Apple for having infringed the five specific patents in this case, and for the 13 particular products in this case.

Q. And could you summarize what you did to carry out that assignment?

A. What I did was to review the evidence that had been presented in the first trial, or for the first trial, and I [623] have also picked up where one of the prior experts left off in analyzing the damages for these specific products.

Q. And who was that expert?

A. That was Mr. Terry Musika. Sadly, Mr. Musika passed away last December. I was asked to step into his shoes and complete the calculation to present it to you today.

Q. And what was the name of the firm that worked with Mr. Musika?

A. His firm was named Invotex, and I worked with the same individuals at Invotex since then as he had worked with in preparation for the first trial.

Q. Can you estimate for us roughly how much time, in combination, Invotex, your staff, and you have spent on this assessment of how much damages Samsung should pay to Apple for the patent infringement at issue in this trial?

A. I know that as of the first trial, Mr. Musika and his colleagues had spent about 7,000 hours preparing the damages calculations and the damages database that I have since used.

I have spent about 400 hours personally since then reviewing that damages database and preparing the calculations for you.

And then my colleagues at Davis & Hosfield have spent another 500 hours assisting me with that.

* * *

[625] The 13 products down the side are the ones that have been found to infringe. Those are the Samsung products. Twelve of them are smartphones, one of them is a tablet.

And the three utility patents that they have been found to infringe are marked in the yellow boxes with the x's.

Q. I want to just get a couple pieces of terminology straight so we can all be clear about what you're saying.

First of all, you used the word "products." when you say "products," what should the jury understand you to mean?

A. I will try to use that, that term to mean the, call it the families or the names of those products.

So, for instance, the first one on the list is the Captivate, and I think we saw that one used earlier today as an example. So the particular phone model that is called the Captivate, I will refer to as a product or one of the infringing products.

Q. Okay. So a product is the same thing as a model?

A. I'll think of it that way.

Q. And we have 13 of them at issue in this trial?

A. We do.

Q. What did you mean when you said the word "unit"?

A. Unit, I mean any single phone. So, for instance, here's mine. This one happens to be an iPhone. But this is a unit (indicating). So when I talk about calculated damages, we had to do so for each individual unit.

[626] Q. Were the damages in this case calculated on a, literally a unit-by-unit basis?

A. They were, and I think we'll probably end up talking more about that.

Q. What are you depicting by the yellow highlighted on slide 4?

A. The yellow highlighting will be the patents that the, or the products, the 13 products that infringe the three utility patents, and you can see that for each of those products, I have marked with x's the specific patents that those products have been found to infringe.

Q. Okay. Can you explain to the jury what is meant by a notice date in assessing patent infringement damages?

A. I won't give you a legal definition since I'm not a lawyer, but my understanding of that term and the way I have used that is that is the date at which damages start, at least in this case.

Q. What are the notice dates, that is, the dates on which you started assessing damages, for the utility patents at issue in this case that are shown in the highlighted areas here?

A. I can tell you that the notice dates that I have used are for the '163, June 16th of 2011, and that relates to the products have X's below that.

The notice date for the '381 that I have used is August 4th of 2010 for the X's in the products that are marked

* * *

[650] Q. Okay Sticking with lost profits for a moment, why is demand relevant to the lost profits question?

A. Well, keeping in mind that the question is whether it's reasonably probable Apple would have made more sales, so one of the questions that has to be answered is, is there any demand for Apple's products? Did anybody want to buy Apple's products if Samsung was not selling the infringing products?

Q. And what conclusion did you reach about whether there was demand for the Apple products that competed with the Samsung products? That is, Apple smartphones and Apple tablets?

A. I think there's clearly demand for the iPhone and the iPad. We heard all about it yesterday from Mr.

Blevins. You probably already knew that Apple has sold hundreds of millions of iPhones and iPads around the world, and Mr. Blevins made it clear that they were pretty much selling like hotcakes.

Q. And what about demand for Apple's patented features? What did you conclude about that?

A. I believe there's also evidence of demand for Apple's patents features. That comes from information that I found in the files of both Apple and Samsung.

Q. And what—can you give us an example of the kind of [651] Apple document that you examined that was relevant to demand for the patented features?

A. There were a number of surveys that have been conducted by Apple, and I think you'll see a few of those probably with Mr. Schiller, who will be another witness in this case.

And they show that there is clearly demand for ease of use and the appearance as it relates to iPhones and iPads.

Q. Can you give us an example of the kind of Samsung document that you looked at that was relevant to the demand issue?

A. I reviewed a number of Samsung documents that are relevant to demand, and I listed them in my report, but I picked three of them that I thought would be useful to use as examples today.

Q. Okay. Could you look at PX 34 in your binder.

A. I have that.

Q. Okay. What is PX 34, Ms. Davis?

A This is a document that comes from Samsung's files. It's titled "feasibility review," and it's dated September of 2007.

MS. KREVANS. Your Honor, we move the admission of PX 34.

THE COURT: Any objection?

MR. PRICE: No objection.

THE COURT: It's admitted.

(Plaintiff's Exhibit 34 was admitted in evidence.)

THE COURT: Go ahead, please.

[652] MS. KREVANS: Thank you, your Honor.

Q. Ms. Davis, can you put the date of this document in context for the jury with respect to the launch of the iPhone, the first iPhone?

A. Recall that the first iPhone was launched earlier in the year 2007, so this is now several months after that launch. Q. And what is the, in general, the content of PX 34?

A. In general, I understand the content of this to be to understand what's happening in the smartphone market, and part of this particular document focuses on the effect that the iPhone is having in that market.

Q. Okay. Could you look at page 13 of PX 34? What did you find that you found relevant to your opinions on page 13?

A. As you see, on this page this is titled "smartphone market-present" and in the middle of the page, it refers to "4 mobile phone trends," and it details a list of those four.

It says, "our research has identified four key factors that we expect will shape handsets in the coming five years."

The first of those factors is the Apple iPhone.

And understand that this purple circle here was on the document I didn't put it there. That came out of Samsung's files that way.

So they clearly believed, or this document would suggest that they believed that the Apple iPhone was important in the smartphone market.

[653] Q. Okay. Just so we're clear about time period, this is a 2007 document; right?

A. Yes, it is.

Q. So why does it say 2012 at the top of the page?

A. I think that, as it says here, it's talking about how it's going to shape the market for the coming five years So in 2007 through 2012, they thought the iPhone was going to have a big impact on the market

Q. Okay. Could you look at page 38 of this same document from Samsung's files?

A. I have that.

Q. What did you find on page 38 that was relevant to your analysis of demand for Apple's products or the patented features?

A As you see on this page, it's titled "iPhone effect analysis," and in the middle of the bottom, or on the right, it says "factors that could make iPhone a success," and it lists four such factors. The first two of those are "easy and intuitive U/I," that means user interface, "that covers all user classes."

And the second one is "beautiful design."

Q. Okay. Looking back at your summary of the lost profits factors, the third thing you have under demand is "conjoint survey."

A. Yes.

[654] Q. What does that refer to?

A. That's referring to the survey that was prepared by Dr. Hauser that he discussed yesterday and this morning.

Q. And how did you use Dr. Hauser's results in your analysis?

A. I have used his results as an indicator of demand. The fact that people were willing to pay more for a product because it had certain features suggested to me that they wanted those features. Otherwise they wouldn't pay an extra $100 for them.

Q. Okay. Let's look at one more document before we move on from demand.

Could you look at PX 36 in your binder.

A. I have that.

Q. What is PX 36?

A. PX 36 is another document that comes directly from Samsung's files. It is one that was prepared by a consultant that was engaged by Samsung. That consultant's name was Gravity Tank

This document is dated December of 2008.

MS. KREVANS: Your Honor, we move the admission of PX 36.

THE COURT: Any objection?

MR. PRICE: No further objection.

THE COURT: It's admitted.

(Plaintiff's Exhibit 36 was admitted in evidence.)

THE COURT: Go ahead, please.

[655] BY MS. KREVANS:

Q. Okay. What is, overall, the nature of this document from Samsung's files, PX 36?

A. This is a document that has 177 pages and a lot of detail about the work that this particular consultant had done, but one of the things in particular was for that consultant to have interviewed Samsung customers and summarized those results.

Q. Does PX 36 have any content that, in your view, shows that there was demand for the iPhone and/or demand for the patented features in the iPhone?

A. Yes. There are several pages in here that are particularly pertinent. I would probably refer you to page 20 to begin with.

Q. Okay. This is an actual page from the document?

A. This is straight from the document.

Q. Okay.

A. And what we see here, as the title says, "pundits tell us that the iPhone is a revolution."

And the first one on the left says "Apple Inc.'s iPhone has been the world's most influential smartphone since its debut a year ago, widely hailed for its beauty and functionality."

Q. Could you look at page 31 of the Gravity tank report? What do we have here?

A. As we see on this page, the picture in the center is the [656] iPhone, and I understand that the face of

that iPhone is what's covered by the '677 design patent.

Q. And what did Samsung's consultant report to it about the design of the iPhone?

A. What it talks about, as we see in the heading, is the "screen-centric design has set the standard for touch."

And it goes on and says "the strong screen-centric design has come to equal what's on trend and cool for many consumers."

Q. Can you look at the next page? What did Samsung's consultant report to it on the next page?

A. As you see in the title, "for state of the art, Apple has overtaken Samsung as the most stylish brand overall."

Q. You've already talked about the design patent.

Did you find anything in this document that you thought was relevant to demand for the patented features of the utility patents, the non-design patents at issue in this case?

A. Yes. In fact, I would refer you to page 36.

Q. Okay. What did you find there that you think the jury should pay close attention to?

A. Well, this page is titled "the iPhone isn't just easy to use, it's sexy to use" and there are three pictures on here The first one is labelled "fun. Gestures like the two fingered pitch and flick add a game-like quality to interactions. The flip adds a level of cool."

I understand that particular functionality to be enabled [657] by the '915 patent.

The second picture is labeled "whimsical." it says "lists bounce, icons flitter—the iPhone has a sense of whimsy that shows a thoughtful character in the interface."

That bouncing list point I understand to be a functionality that's enabled by the '381 patent.

Q. Okay Can you give us one more example of a document that you found relevant to this issue of demand?

A. The third of the three examples that I pulled would be PX 40.

Q. Okay. Could you turn to that in your binder, and tell us what it is.

A. This is an e-mail exchange between executives at Samsung. It's dated February 11th of 2010, so this is still several months before the launch of the infringing products. It's titled "summary of executive level meeting, supervised by head of division."

Q. So just so our chronology is clear here, that first document you showed us, the feasibility review, that was from September of 2007?

A. That's correct.

Q. And then we have one from—

A. December of 2008 was the one we just looked at that was prepared by Samsung's consultant, Gravity tank.

Q. And now where are we?

[658] A. We are now in February of 2010.

MS. KREVANS: Okay. Your Honor, we move the admission of PX 40.

THE COURT: Any objection?

MR. PRICE: No further objection.

THE COURT: It's admitted.

(Plaintiff's Exhibit 40 was admitted in evidence.)

THE COURT: Go ahead, please.

BY MS. KREVANS:

Q. What did you find among this e-mail chain among Samsung executives—and this is a translation, of course. What did you find in this document that was relevant to the issue of demand?

A. Well, this document is summarizing some of the things that were said at that particular meeting, and on page 2, I would refer you about two-thirds of the way down to a line that starts with "I hear things like this: let's make something like the iPhone.

"When everybody (both consumers and the industry) talk about the user experience, they weigh it against the iPhone. The iPhone has become the standard. That's how things are already.

"Do you know how difficult the Omnia is to use?"

And understand that the Omnia was the Samsung product at the time, or one of the Samsung products.

[659] "When you compare the 2000 version of the iPhone with our current Omnia, can you honestly say the Omnia is better? If you compare the UX with the iPhone, it's a difference between heaven and earth."

Q. So this is a Samsung executive in 2010 saying the 2007 version of the iPhone was better?

A. Better than the Omnia that was being sold in 2010.

Q. What else did you find in this document that you thought was particularly relevant to the issue of demand?

A. Page 5 picks up on the discussion about heaven and earth. In the third paragraph, it says, "all this time we've been paying all our attention to Nokia, and concentrated our efforts on things like folder, bar, slide, yet when our user experience is compared to the unexpected competitor Apple's iPhone, the difference is truly that of heaven and earth."

And then in bold letters it says, "it's a crisis of design."

Q. Going back to—well, going back to the board, let me ask you one other question about the conjoint survey that Dr. Hauser did.

There are some dollar amounts associated with the results of his survey. Did you actually use those dollar amounts in assessing damages?

A. No. I was relying upon his survey as an indicator of demand.

[660] Q. Okay. What was your overall conclusion about whether there was demand for Apple's iPhones and iPads in the relevant time period?

A. There was clearly demand for Apple's iPhones and iPads during the overall time period.

Q. What was your overall conclusion about whether there was demand for Apple's patented features in that time period?

A. I think the Samsung documents that we just showed indicate that even Samsung had a demand for those features and functionalities.

Q. So I should check this box?

A. You can check that off.

* * *

[Cross Examination of Julie Davis]

[719] Q. So in your—in your direct, I thought that I heard you say—and if we can go back to slide 8—I thought I heard you say that introducing these phones is the reason Samsung's market share increased.

A. Well, I know that in that first quarter where you see the jump in the red line, 90 percent of that are infringing phones. So—

Q. I'm sorry. 90 percent—

A. 90 percent of that increase in 2010, in that red, red line that goes up—

Q. Um-hum?

A.—Are infringing phones.

* * *

[776] BY MR. PRICE:

Q So Ms. Davis, I want to ask you about a few phrases that were used and some of the documents you looked at.

And do you recall there was a document, it was PX 40, that talked about Omnia and that iPhone and—it was iPhone and Omnia was the difference between heaven and earth?

A I remember that. I have it here in front of me.

Q. And as you know, these phones here use the Android operating system that Google creates?

A. Yes.

Q. And that Omnia phone, that was a Microsoft Windows-based phone that really was horrible, wasn't it?

A. I'll take your word for it.

* * *

[Direct Examination of Philip Schiller]

[805] Q. From a marketing perspective, what was Apple trying to convey at this original announcement event?

A. This was a breakthrough product for us, and we think for the world, and we wanted to show people how beautiful the iPhone was, we cared a great deal about designing beautiful products at Apple, that it delivered some functionality, some uses for people that they would want to have with them all of the time.

There was a lot of value in this product and the things it would do, and that it would do these things in revolutionary, new ways that were completely intuitive and easy to use.

And those were some of the things we wanted to demonstrate [806] and get across to everyone in the world.

Q. Approximately how many people were present at the Moscone center for this event?

A. In the center, it holds a few thousand. I don't remember the count of that exact event, but a few thousand.

Q. And what was the—what was the atmosphere like?

A I always use the word "electric." That's how I recall it being.

Q. As you sit here today, do you remember actually being there at that event?

A. Oh, yes. I'll never forget it.

Q. What was the sort of immediate reaction to the announcement of the iPhone?

A. Well, huge reaction. The whole world had been waiting for this announcement All the rumors were that Apple was going to do a phone People had already called it iPhone before we announced what it was going to be called.

And there was press stories from everywhere in the world, and they varied from one extreme, people who were amazed by it, blown away by it, just loved it immediately, and there were others that were strong detractors and said this is a mistake and it would fail and we would fall flat on our face.

* * *

Exhibit A

Plaintiff's Exhibit No. 3038

Case Clip(s) Detailed Report
Wednesday, November 13, 2013, 12:13:29 AM

Apple v. Samsung

Lee, JunWon (Vol 01) - 03/05/2012 [Lee, Jun Won]

1 CLIP (RUNNING 00.03:51.568)

Plaintiff Affirmative (Damages Trial)

LEE-FINAL 9 SEGMENTS (RUNNING 00:03:51.568)

1. PAGE 7:25 TO 8:01 (RUNNING 00:00:03.900)

25 Q Good morning, Mr. Lee.

00008:01 A Good morning.

2. PAGE 9:01 TO 9:02 (RUNNING 00:00:08.200)

00009:01 Q Okay. Who is your employer?

02 A Samsung Electric—Electronics.

3. PAGE 9:06 TO 9:07 (RUNNING 00:00:11.800)

06 Q What is your job title?

07 A Director of licensing.

4. PAGE 33:21 TO 33:24 (RUNNING 00:00:33.067)

21 Q Okay. So at that first meeting that you

22 attended, Mr. Lee, do you recall Apple stating that

23 Samsung had copied Apple's products?

24 A Yes.

5. PAGE 37:06 TO 37:09 (RUNNING 00:00.33.233)

I'm going to mark, as Exhibit No. 1, a document titled "Samsung's Use of Apple Patents in Smartphones."

(Exhibit 1 was marked for identification by the court reporter.)

6. PAGE 37:21 TO 37:25 (RUNNING 00:00:41.634)

Q Mr. Lee, you testified earlier that you thought that Apple made a written presentation at the first meeting you attended.

Is this the written presentation that Apple provided at that meeting?

7. PAGE 38:02 TO 38:05 (RUNNING 00:00:24.900)

THE WITNESS: I don't remember the contents of this document entirely, but it appears to be the one.

MR. HEYISON: Okay.

THE WITNESS: To my recollection.

8. PAGE 59:14 TO 59:15 (RUNNING 00:00:34.034)

Did Apple ever offer Samsung a license to either design patents, trade dress, or transaction?

9. PAGE 59:18 TO 59:21 (RUNNING 00:00:40.800)

18 THE WITNESS: As I told you earlier, Apple did
19 not talk about trademark, trade dress, or design
20 patents; therefore, Apple's licensing proposal did not
21 include things about those.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:03:51.568

[810] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. C-11-01846 LHK

APPLE INC., a California Corporation,

Plaintiff,

vs.

SAMSUNG ELECTRONICS CO., LTD., a Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York Corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

San Jose, California
November 15, 2013

Transcript of Proceedings before the Honorable
LUCY H KOH United States District Judge

Volume 4
Pages 810-1064

Official court reporter: Lee-Anne Shortridge, CSR, CRR Certificate number 9595

Proceedings recorded by mechanical stenography transcript produced with computer

* * *

[Direct Examination of Philip Schiller, continued]

[822] You can consider it for the truth of the matter that's asserted in the ad.

MR. MCELHINNY: Thank you, Your Honor. So that refers to the ad that we just showed can be considered for the truth?

THE COURT: PX 127.

MR. MCELHINNY: Thank you.

Q. What was it about the product itself that, that—or was there anything about the product itself that helped you create this introduction to multitouch technology?

A. Oh, there were—there were a number of things. I think as we created the experience of the iPhone, the team had to solve a number of problems that, that were created when you get rid of keyboards and try to create new ways to maneuver around, and in inventing those things, they invented solutions to problems that made it successful.

And these are the solutions that allow you to scroll around and pinch and zoom and double tap, and all these things were done in ways that were uniquely Apple. They were ways that made it, in the end, really easy to use.

It all adds up to that. That's the thing I think we're best known for, beautiful products that are easy to use, and all of these capabilities, delivering this ability to do this stuff, was done with inventions and technologies that ultimately made it beautifully easy to use.

* * *

[842] Q. Have you created a summary of some of the information on the documents that we've just put into evidence?

A. Yes.

Q. If you would look, please, at chart PDX 10.1, PDX 10, the demonstrative. Can you explain what this summary tells us?

A. Yes. So what this shows is for one of the questions in that survey—and each of those four surveys that we've spoken about here have this same question in it—how people responded.

And the question in this case of iPhone buyers is, how important was attractive appearance and design in their decision to purchase the iPhone?

And the customer could respond with one of four things: it was very important; somewhat important; neither important or unimportant; or don't know or very unimportant or what unimportant.

And the way we look at this in marketing is simply we ask the question and we'll combine the top two, very important and somewhat important, into one number, and that's called the top two box number, and that is our method for generally was it important to them It's a good measure of that.

And so on this question of attractive appearance and design, what you see is that by the two blue boxes, the combined response by these customers was over 80 percent consistently felt that attractive appearance and design was [843] important to their purchase decision.

Q. What does attractive appearance and design, what does that encompass in these surveys?

A. Well, I believe what we're trying to get at is the customer's feelings about the physical appearance of the iPhone, as well as what the user interface looks like.

Q. Does Apple do a lot of surveying of its own?

A. A fair amount, yes.

Q. Do you purchase third party surveys?

A. We do that as well.

Q. How long, in your career, have you been working with surveys?

A. Oh, I've been working with surveys since I was in colleague and creating them. So most of my life.

Q. Is there an art to creating surveys?

A. Absolutely.

Q. And just, we don't—you could spend days, I know, but can you give us the 35 second summary, please.

A. I will try. It's a complex topic.

The first thing is to try to understand what you can ask and what—and get a reasonable result and what you can ask that won't produce a reasonable result.

And then to always, always understand the context of what you're looking at, what was asked, who you asked it of, that's the base of the respondents, and try to only read the data and [844] not read too much into it. People tend to extrapolate and read too much.

And there are so many guidelines to it, but I'll give you one example of something I always think about in the surveys.

* * *

THE WITNESS: So one of the things I tried to do, and this survey I think represents it really well, is it's reasonable to ask a customer what they think about something they just did. It's reasonable to ask them about something recent or that they're going to do soon.

I don't try to create a survey, if I can, where you actually have to put something in their head to then get it out.

In other words, I love asking questions of people of "what do you think," and then try to learn from them.

But when I say, "here's something you didn't know. Let me tell it to you. And now you tell me back what you think." Well, that's getting less reliable data.

And the more you layer on variables, the more complex it gets, I just think the less reliable the data. That's my experience of doing this.

[845] BY MR. MCELHINNY:

Q. Are there good surveys and bad surveys?

A. Always.

Q. And when you are handed a survey or you buy a survey, what do you do to determine whether or not the survey results are worth relying upon?

A. I always look at the methodology, how did they ask? What tools did they use? I look at the time frame it was done in to try to understand the context of how close it was to the actual event and activities. I try to

look at the base of the respondents to understand, is that the representative group? Do they have any bias built in or not? And I try to put myself in the place of the person being asked to understand how reasonable it is to expect them to answer the question and what can you expect the results to be.

It's—you can ask anyone anything, but at the end of the day, you have to consider all of these variables to understand the relative reliability of the results.

Q. Why would Apple buy surveys from third parties when Apple doesn't control the methodology of those surveys?

A. Oh, very simply because others will see them and we want to know what they say.

Q. If you turn to the second page of this demonstrative, PDX 10.2, this talks about ease of use.

Can you tell us what this survey results teach us about [846] ease of use?

A. So this is a very similar to the previous chart. It represents the response in our iPhone buyer's survey that we asked of customers.

The question in this was, "how important was ease of use to your decision to purchase an iPhone?"

And again, looking at the same top two box methodology, what you see is consistently well over 90 percent of the customers of the survey responded that ease of use was important to their purchasing decision.

Q. And first of all, what is ease of use?

A. Ease of use is what we consider an attribute It's how easy something is to use, and in my belief when you're talking specifically about an iPhone, you're talking about the software and the features of the

software and how they combine to make the tasks you want to do easy to do.

Q And in—based on your experience, what is it about the iPhone that makes it easy to use?

A. Well, there have been many things that we've done in the user interface with multitouch that makes it easy for the customer to do the things they want to do.

We had to make it intuitive We had to make it so that even though these are software buttons, they somehow created a sense of, of place where you intuitively understood the physics and the reality around that place, so how things moved around, [847] how they responded to your finger. How they interpreted what you were trying to do with one or two or more fingers and as you did different tasks are all things that the team worked on to try to make a very intuitive, obvious, easy to use environment.

Q. Sir, would you open your binder, please, to Exhibit 12.1.

A. Okay.

Q. What is in your binder, sir?

A. It is a cd with a video on it.

Q. Does it have the title of the video?

A. Yes. Watered down.

Q. Has Apple created advertising that directly advertises its ease of use?

A Yes

Q Is this an example of that ad?

A. It is.

* * *

[850] THE WITNESS: It was a news story that I read that had a picture and story about the Galaxy S smartphone, and I remember being quite shocked when I saw it. My first thought was, wow, they've completely copied the iPhone, and it was astonishing and shocking to me.

BY MR. MCELHINNY:

Q. Why was it shocking to you?

A. Well, we all compete and make our products and make things for customers.

But to see something that appeared to my eye to go so far to make it look exactly like an iPhone and so much so that people might confuse it from a marketing standpoint is a really, really bad thing to have to deal with and causes tremendous problems for me.

Q. Why is that kind of copying a problem for you in marketing?

A. Well, in marketing, as we've spoken about earlier, Apple's entire marketing strategy is around the product as the hero. We show the product, we show what it looks like, we show what it does and build the demand for it around how it looks and how it works, and we do that around what we believe to be unique looks, unique features that we've invented and that will drive our sales and demand for our product, as well as the association with Apple as the innovator and inventor of these [851] things.

And when someone else creates something that looks a lot like it in ways that are unique to us and creates something that works like ours does and the things that we've invented, they now make it really hard for customers to figure out whose product is

whose When you see a billboard or magazine ad, if they look the same, whose was it? You don't know.

So it dilutes the marketing I do. It weakens my ability to create demand for customers.

And in the end, it also weakens the view the world has of Apple as this great designer and great innovator if people first saw an ad of a Samsung product that copied something from Apple and then they thought they did it and they see Apple later, they don't associate us as the innovator and creator and designer of those things and it makes us seem much less of a company, much less of a product in customers' minds. I think it undermines our entire marketing effort.

Q Based on your actual experience, has the patent infringement that Samsung has been found liable for, has that actually affected your ability to market Apple products?

A. Yes, I believe so.

Q. And—

MR. PRICE. Objection, vague. Vague as to market versus sales.

MR. MCELHINNY Well, I defined marketing at the very [852] beginning of the—

THE COURT: Overruled.

Go ahead, please. You may answer.

BY MR. MCELHINNY:

Q. And what are the effects that you have observed, sir?

A. I seen that since this has begun, it has been much harder for us to market our products and gain

an understanding with customers that these products are unique and special and created by Apple.

I found it much harder to create demand and people question our innovation and design skills in ways that they never used to after this all began.

Q. Sir, if we focus specifically on 2010 and 2011, if the infringing products in this case had not been on the market, do you view—do you believe that your marketing of Apple products would have been even more successful?

* * *

Go ahead, please.

THE WITNESS: Yes. This is an incredibly important time. We spoke earlier about how the market changed after the iPhone into the previous feature phone market and the new smartphone market, and we all were trying to get customers into smartphones, and then we know that they like to stay with those [853] ecosystems and influence their family and friends as well.

And during this time, I believe that as this has been occurring that it's been harder for us to get new customers and bring them into our ecosystem and to experience the first Apple product than had this not occurred.

Q. Have there been times when Apple was not available on particular carriers?

A. Yes, of course.

Q. Have you been able successfully to market Apple products to people who were not on one of the Apple carriers and to encourage them to switch carriers?

A. We have.

Q. And how did you do that?

A. We tried to create a unique product that someone else doesn't have, so one reason to buy a product is to—is certainly because you want to stay on your carrier, but if your carrier doesn't have a product and that product has features and capabilities or designs that you really want, then you're more willing to consider switching and going to another carrier.

So that uniqueness helps actually when you're in a situation where you're not on every carrier.

* * *

[Cross Examination of Philip Schiller]

[857] Q Let me ask you, though, at the time of Apple's—let me rephrase it this way. There came a time when the marketing arm of Apple wanted to start doing some advertising or marketing about how Apple was the first at certain things. Do you recall that?

A. No, I don't recall that.

Q. Okay. Let me show you Exhibit 578. And do you recognize this, sir—

[858] MR MCELHINNY: Your Honor, I don't think this has been admitted.

MR. PRICE: Yeah, don't show it. Don't put it up until I tell you to, Ryan. Thank you.

Q. And you recognize it at the top, you see these are the e-mail exchanges that includes Mr. Sinclair, Kelley Altick and Eric Jue; correct?

A. Yes.

Q. And could you tell us who Mr Sinclair is?

A. He was a product manager on my product marketing team.

Q. And Eric Jue, who is that?

A. Also a product manager on my managing team.

Q. And Kelley Altick?

A. I do not know Kelley Altick.

Q. And if you look at this, this appears to be an e-mail that

Was sent within Apple?

A. It's a few e-mails inside Apple, yes.

MR. PRICE: Okay. Your honor, move Exhibit 578 into evidence.

THE COURT: Any objection?

MR. MCELHINNY: No objection, your Honor.

THE COURT· It's admitted.

(Defendant's Exhibit 578 was admitted in evidence.)

BY MR. PRICE:

Q. And if we can turn to—you know e-mails have strings, [859] so at the bottom is really the first e-mail; right?

A. Yes.

Q. And if we turn to look at the first e-mail, we have to actually go to the third page where it starts, 578.003.

And at the bottom here, you see there's an e-mail that starts—I'll start at the from Rebecca Van Dyck, and the e-mail here says, "as we're starting to think about the next round of work on iPhone, we're trying to get smart of some of iPhone's historical milestones.

So starting with the very first iPhone, we're looking for a list of innovations and technologies," next page, "that iPhone was the first to incorporate. Some examples: the first phone to incorporate a full touchscreen face. The first phone to have multitouch interface gestures. The first phone to have robust apps and app store The first phone to incorporate a proximity sensor "

So were you aware of this search to try to find firsts?

A. No.

Q. Does Mr. Sinclair report directly to you?

A. No.

Q. How many levels down is he?

A. Two levels, I believe.

Q. Okay. So this effort didn't actually make its way to you?

A. Correct.

Q. If we look at page 578.002, and let's look at this "hey Michael" from Steven Sinclair on April 6th, 2010.

[860] If you would get the date in there, too, that would be great

You see where Mr. Sinclair wrote, "it's tough to approach this with the criteria being 'first.' I don't know how many things we can come up with that you could legitimately claim we did first. Certainly we have the first commercially successful versions of many features, but that's different than launching something to market first. Can we nuance this so it isn't about shipping a feature first."

And an example, "the first phone to incorporate a full touch screen face," and "not true" and you'll see

where it says Wikipedia and an LG Prada, and then it goes on to talk about apps.

So I take it that if the people two levels under you concluded something wasn't worth pursuing, it wouldn't reach you?

A. That might be the case.

Q. And this refers to the LG Prada. I'm going to show you what's a joint Exhibit, 1093.

And your Honor, may I approach the witness to show him this?

THE COURT: Yes. Has that previously been admitted in this case?

MR. PRICE: I don't think so.

MR. MCELHINNY: We move its admission, your Honor.

[861] THE COURT: All right. Go ahead, please.

MR. PRICE: Then it's a joint request.

(Joint Exhibit 1092 was admitted in evidence.)

BY MR. PRICE:

Q. I'll show you 1093, which is now admitted (handing). And let me ask you, do you know whether that's the phone that was being referred to as a phone with a touchscreen face, the LG Prada?

A. I do not know for certain.

Q. Well, in your testimony on direct, you were talking about phones—can we switch this to the elmo—you were talking about comparing the iPhone to phones before the iPhone.

Do you recall that?

A. Yes.

Q. And when you were making that comparison about, you know, how the iPhone was new in many ways, were—did you have in mind, then—no signal.

Ah. Did you have in mind the LG Prada, which is Exhibit 1093?

A. Of course not, no.

Q. You also talked in your direct about the iPhone being beautiful.

A. Yes.

Q. And it's a nice looking product; right?

A. I believe so.

[862] Q. Apple doesn't own or have a patent on a product being beautiful or sexy; correct?

A. Correct.

Q. And Apple doesn't own a patent on there being a touchscreen; right?

A. I don't believe so.

* * *

[886] Q. So let me ask you then about your experience and Apple's experience concerning decision factors, that is, why customers buy things.

You'll agree that your iPhone has hundreds and hundreds of features?

A Yes.

Q And every feature you put on the iPhone you put in thinking it's going to make the iPhone better; correct?

A. We hope so, yes.

Q. Your view, though, is that customers don't think of only individual features when they're buying a phone, they think of it all together; correct?

A. I think they think both, that they do think about the entire experience, and they think about some features, yes.

Q. Well, no. Haven't you testified that you don't think they think of only individual feature, they think about the whole, I don't want to say gestalt, but the experience of putting all those features together?

A. Yes, they do think about that.

Q. And, in fact, you talked about ease of use. You talked about, you know, you're trying to give the consumer an overall experience that something, for example, is easy to use; correct?

A. At one level. This is a very complex topic, but, yes, at one level.

[887] Q. And again, you understand that Apple doesn't own the exclusive right to an overall concept of ease of use; that is, competitors are allowed to try to make their products easier to use if they don't infringe Apple's patents? You understand that?

A. Yes.

Q. And in connection with the, the ease of use, the overall ease of use I mean, it's your view that the iPhone, overall, is easier to use than any of its competitors?

A. I hope so, yes.

Q. And you thought that throughout the years?

A. Yes.

Q. So if someone was really—your belief is if someone was focussed on ease of use as driving them to purchase something, then if they're, if they're smart, they're going to buy an iPhone because, overall, it is easier to use?

A. That's not all they think. I think everybody cares about ease of use to some degree, and it varies by the individual, but to a degree, and most everybody cares about that. It's not all they care about, though.

Q. If it's something that somebody cares about a lot, if it's like a number 1 consideration, your belief is they would buy an Apple if that was really what drove the sale?

A. I'd like them to, yes.

Q. Pardon?

[888] A. I'd like them to, yes.

Q. I'm sure you'd love them to.

But my question is, if it's something that's really driving them to buy something, if they're saying I want something that's easiest to use, you think they would buy an Apple if that's their primary criteria?

A. I can't say without knowing the individuals and their issues and what they want. I think that's too abstract.

I think people should care about ease of use. Most everyone does. But it's not the only purchase decision.

Q. Okay. Some purchasers might focus on some other aspect of a phone that matters to them.

A. I think we all consider multiple aspects when we purchase a device.

Q. Okay. Apple has a lot of experience in these surveys; right?

A. Yes.

Q. And it asked about ease of use in the surveys; correct?

A. Sometimes, yes.

Q. And that's a broad term. You said it covers hundreds of features; correct?

A. Yes.

Q. And some of the features that it covers are, for example, the set up right out of the box; correct?

A. Yes, that contributes to ease of use.

[889] Q. In fact, you said that's one of the things about ease of use that you're most proud of with respect to the iPhone?

A. Perhaps I did. I am proud of that, yes.

Q. And I think you were saying that iPhone doesn't come with instructions because it's so easy to use; correct?

A. Correct. There's no need.

* * *

[904] Q. So when we look at your experience as a marketing, someone in marketing, you've told us that there are hundreds of factors that may go into why someone might buy an iPhone; correct?

A. Yes.

Q. Hundreds of factors as to why someone might buy a Samsung; correct?

A. Yes.

Q. And those factors might not be the same? That is, some people may prefer things which only Samsung offers, such as the commodity you referred to as the big screen?

A. There may be some items not the same on both lists, correct

Q. Some items such as a removable battery, correct?

A. Yes.

Q. That is, Samsung, we can remove the battery, and Apple you cannot; correct?

A. I don't know. I don't look at what Samsung batteries do.

Q. Okay. Well, isn't—actually, haven't you done surveys and reports on battery capability? That is, you know, which phones are better in battery, which are better in screen size between you and Samsung?

A. I don't recall. Perhaps. I don't remember one.

* * *

[908] The question is this: does Apple intend to allow Samsung to sell infringing products in the United States?

A. Absolutely not.

Q. Does it matter whether it infringes one patent or five patents or fifty patents?

A. No to me it doesn't.

Q. Why aren't you just letting Samsung infringe your patents?

A Because ultimately what's been done here is to copy many attributes of Apple's products and to copy both designs and features, and these are things that

are the very essence of what Apple is about, how we create what we hope customers love, how we've built our business and what differentiates us. [909] That's what our business is about. Other companies have other business models. That's Apple's, and if we don't have that, we don't have Apple's entire business.

And you can pick apart one feature or one product, but at the end of the day, there is a cumulative effect of doing all this that is incredibly damaging and, and at some point it has to stop and you say no to any of these products that do that

* * *

[Samsung Oral Rule 50(a) Motion]

[922] In prior motions, in the pretrial motions, we've already explained Samsung's concerns about the cost and income approaches that Ms. Davis presented and how these approaches are contrary to the evidence.

Specifically with respect to the income approach, Ms. Davis included the brand value calculations where she attributed a lot more value to the patent at issue and did not separate that from other patents that Apple has, and overall brand value as well.

Specifically, her calculations include all patents other than just the two design patents at issue, the '677 and '305 patents.

And finally, Apple did not introduce probative evidence of comparable licenses as required by the Georgia Pacific factors.

With respect to the final theory, the establishment of Samsung's profits, again, we've argued this in prior pleadings and prior trial, but Apple presents no evidence of apportionment

Samsung previously cited a number of cases, including the Piano cases, Bush & Lane Piano versus Becker Brothers and Untemeyer versus Freund, all of those cases stand for the proposition that you cannot get infringer's profits on the entire device and you can only do it for the actually infringing feature.

Apple further did not present any evidence of causation, [923] that these particular accused features of the design patents or the patented designs drive the sales and did not include that in their calculation analysis.

As with the lost profits calculations, Apple only presented worldwide profits, not U.S profit figures, and that was improper in terms of calculating the infringer's profits.

Finally, with respect to the profits, Apple's expert did not reasonably account for Samsung's direct and indirect costs and did not consider some of the costs, and Apple's expert improperly applied SEC gross profit percentages to STA and SEA without the basis

We also would like to seek several rulings regarding the damages case as a whole. First of all, Apple has presented no evidence to support an award of damages greater than 379 million and judgment as a matter of law should be entered on that basis

Apple failed to introduce any evidence where Samsung was on notice as to the specific products at issue. We briefed that before in this case, and judgment as a matter of law that Apple is not entitled to any damages before the notice date or any damages in this case after June 30, 2012.

And, Your Honor, I'm sorry. When I was talking about the infringer's profits, I neglected to mention

that also the infringer's profits are only available where the designs are applied to articles, and there was no discussion and no [924] evidence introduced on whether the three, the designs in the '305 and '677 patents were actually applied to the articles required by Section 289.

* * *

[Direct Examination of Michael Wagner]

[996] introduced this product and then, after the proper time of design around, they could have introduced the software feature in their phone that had hundreds of features when they introduced it.

Q. Now, when you say a software change, you'd have to take the phone and take it apart and look at the innards, do anything like that?

A. No. It's like my phone. Every month or so I get a software update automatically from my provider. I don't have to do anything except for accept the time that it will be updated, my phone will be updated.

Q. Okay. So we'll get into a little bit later about this part of the but for world.

I'd like you to focus now on the bullet that Apple would not have made additional sales, and you say there's no evidence that any Samsung customer purchased the accused phones because of this '915 feature.

Could you tell us what's the basis of that?

A. Well, the basis is principally I looked at the actual customer surveys that were done by both Apple and Samsung in this case, not for purposes of this litigation, but to run their businesses during this relevant time period, and in none of these surveys did

I find any indication by either of these companies that the limited functionality of the '915 patent is what drove anyone in their purchase decision.

[997] I've not seen one piece of evidence that Samsung ever marketed that feature, the '915 feature to any of their customers, so how could their customers even have known that that feature existed when they made their purchase decision?

I believe the customers bought these phones for other features, the ones that were making Samsung the leader in certain functionality of the smartphone market, things like large L.E.D. Screens, the largest screen size in the industry, the fastest processor, the first company to put 4G technology in a phone so that your data would transfer faster, the first company to have turn by turn navigation in their GPS system.

These are the reasons people bought the phones. It was the driving demand for the Samsung products, not the one feature of the '915 patent.

Q. Now, focussing on the surveys that Apple did, or that Apple commissioned, do these surveys reveal factors that purchasers cared about?

A. They did. They looked at what is driving demand for phones, and none of these surveys indicated that the unique feature of the '915 is what anyone cared about when they actually made a purchase decision.

Q. Now, do you—have you prepared—you looked at several studies; correct?

A. I did.

Q. Did you prepare a summary of the Apple studies that you [998] looked at?

A. I prepared a number of summaries, and yes, I did have one that did that as well.

Q. If we could look at, I think 701.005. Apparently—I'm sorry, 701.006. DX 701.006. 006 would be great, Ryan.

Here we go. Is this one of the summaries you prepared?

A. It is.

Q. If you look at the bottom, it says "sources."

Now, what—one, two, three, four, five, six, what are those sources?

A. These are surveys done by a company called Com-Tech who was providing surveys to Apple. These came out of Apple's records, so these are studies that Apple had to study the market.

Q. And what are the numbers that we have here at the top? What do those relate to?

A. That relates to different period of times, usually quarterly. The first one actually is for a three quarter period.

Q. What do the numbers reflect here? Do you see under, for example, multimedia functions, you have 31 percent, second quarter and fourth quarter. What does that refer to?

A. That says that 31 percent of the purchase in that quarter—

* * *

[1000] MR. PRICE: Actually, I would move in the entire summary of surveys, exhibit 701, all sealed.

THE COURT: All right. Any objection to that?

MR. LEE: None except that it should be sealed.

THE COURT: I'm sorry. The whole thing should be sealed?

MR. LEE: Yeah. It's a summary of—every page is a summary of survey information like you have here. It's only nine pages in total.

MR. PRICE: Yeah.

THE COURT: Okay. So you're asking for it all to be sealed or not?

MR. LEE: Yes, all nine pages.

THE COURT: All right. It's admitted subject to sealing. Go ahead, please.

(Defendant's exhibit 701 was admitted in evidence.)

BY MR. PRICE:

Q. Mr. Wagner, we're sealing these because this is Apple's confidential information.

These are the Com-Tech studies you looked at?

A. They are.

Q. If you look at 701.005, could you tell us what that reflects?

A. Well, this is 006.

Q. I'm know. I'm going to switch to 005 now?

[1001] A. Oh, 005, this is a study of what were the reasons people purchased Android phones during these quarters

Q. So Mr. Wagner, in looking at these studies, were there factors that are revealed in these studies that consumers care about in buying, for example, Android phones?

A. Yes. Each one of those—the lines on this survey are the principle reasons why someone bought a phone, and an example, looking at that first period, the most important reason was multimedia functions

That's why people buy smartphones. They want to be able to surf the internet, to read their e-mail, to send e-mails, to do text messages, listen to their music, play games. That's why people buy a smartphone

The second most important reason in that period was the brand model, which is 25 percent.

Again, Apple's got a great brand. Samsung has a great brand. All the major companies in this space have good brands.

But that's a distinguishing feature that people pay for and make their decision on.

Q. And these are studies that go to why someone made an Android purchase; correct?

A. Correct.

* * *

[1017] Q. Now, if you take into account these costs, have you done a calculation as to what the—what Samsung's profits were on these seven products?

A. Yes. For the Infuse 4G from April 15th, 2011, through June 30th, 2012, and for the other six products from June 16th, 2011, through June 30th, 2012.

Q. Okay. If we could look at exhibit 952, if you could look at it, sir, could you tell us what that is?

A. 952?

Q. 952.

I'm sorry. 781. It's always good to have somebody helping you. I'll trust you.

781.002.

MR. LEE: I'm sorry.

THE WITNESS: Yes. This is my calculation of what I believe the operating profit, the total profit of Samsung is during this period of time for the seven products that have [1018] been found to infringe the design patents.

MR. PRICE: If we could show that 781.002 and move it into evidence, your Honor?

THE COURT: Any objection?

MR. LEE: No objection, your Honor.

THE COURT: It's admitted.

(Defendant's Exhibit 781.002 was admitted in evidence.)

THE COURT: Go ahead, please.

BY MR. PRICE:

Q. Could you explain—we can show it. The jury sees it right now.

So if you could explain, we've got the phones listed. You've got a total of 9,590,000 and then a total, excluding losses, of 52,734,959. Can you tell us what you mean by that?

A Well, you can see that during this period, which is end of life for some of these products, and some of these products actually weren't all that successful, that they actually show losses during the relevant period of time that damages can be claimed.

So four of the seven products actually lose money If you subtract those losses from the profits, the profit products, you get the $9.6 million.

But if you do not subtract the losses and only count the operating profit for the successful products, the number is 52.7 million.

* * *

[Cross Examination of Michael Wagner]

[1032] Q. Right. Because the patents have been found valid and infringed; Correct?

A. Correct.

Q. So what you and I are going to talk about is how much compensation should be paid for Samsung's infringement; Correct?

A. Correct.

Q. So let's talk about and help the jury with the number of acts of infringement that were found by the prior jury. Of the Samsung products found to infringe, 12 are smartphones; correct?

A. Correct.

Q. One is a laptop, a tablet computer; Correct?

A. Yes.

Q. So let's focus on the smartphones first; Correct?

There are 10.7 million infringing phones that were sold by Samsung; Correct?

A. That's my calculation.

Q. And it's also Ms. Davis's calculation; correct?

A. It is.

Q. There's no disagreement between you, 10.7 million acts of infringement by smartphones; Correct?

A. If you consider each sale an act of infringement, you are correct.

Q. And you and Ms. Davis agree upon that?

[1033]

A. We do.

Q. Now, for that 10.7 million acts of infringement, Samsung collected $3.4 billion in revenue; Correct?

A. Based on my calculation, I agree with you.

Q. Yeah. And you heard Mr. McElhinny talk about those figures in his opening; correct?

A. He did.

Q. And Mr. Price suggested in his opening that there was some disagreement. Do you remember that?

A. Yeah. I think the disagreement is that there's also really how many of these were sold were revenues for the ones that are the subject of the design patent.

Q. But if we're talking about all of the acts of infringement, 10.7 million, $3.4 billion, or so, is the right number; Correct?

A. Yes.

Q. And for the tablet computers, 725,000 tablets were sold; Correct?

A. I believe that's correct.

Q. You and Ms. Davis agree; Correct?

A. We do.

Q. Each an act of infringement; Correct?

A. Yes.

Q. And Samsung collected $325 million in revenue; correct?

A. That is correct.

* * *

[1] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

[Filed 11/21/13]

Case No. 11-CV-01846 LHK

APPLE INC., a California Corporation,

Plaintiff,

v

SAMSUNG ELECTRONICS CO , LTD , a Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York Corporation, SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

Verdict Form

We, the jury, unanimously agree to the answers to the following questions and return them under the instructions of this Court as our verdict in this case.

FINDINGS ON APPLE'S DAMAGES CLAIMS

1. What is the total dollar amount that Apple is entitled to receive in damages from Samsung?

   $290,456,793.00

2. For the total dollar amount in your answer to Question 1, please provide the dollar breakdown by product.

Samsung Product	Amount
Captivate (JX 1011)	21,121,812
Continuum (JX 1016)	6,478,873
Droid Charge (JX 1025)	60,706,020
Epic 4G (JX 1012)	37,928,694
Exhibit 4G (JX 1028)	2,044,683
Galaxy Prevail (JX 1022)	22,143,335
Galaxy Tab (JX 1036)	9,544,026
Gem (JX 1020)	4,831,453
Indulge (JX 1026)	9,917,840
Infuse 4G (JX 1027)	99,943,987
Nexus S 4G (JX 1023)	10,559,907
Replenish (JX 1024)	3,046,062
Transform (JX 1014)	2,190,099

Have the presiding juror sign and date this form.

/s/ Lee R Allen

Presiding Juror

Date: 11/21/2013

[1] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

[Filed 02/07/14]

Case No. 11-CV-11-01846 LHK

APPLE INC., a California Corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., a Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York Corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

Order Denying Samsung's Motion for Judgment as a Matter of Law, Remittur, or a New Trial; Denying Apple's Motion for Judgment as a Matter of Law and Other Post Trial Relief

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On November 21, 2013, after six days of trial and two days of deliberation, a jury awarded Apple roughly $290 million in damages for Samsung's infringement of three U.S. utility patents and two U.S. design patents. *See* Dkt. 2822 ("November 2013 Jury Verdict").

* * *

[12]

C. The Jury's Award of Infringer's Profits

The remainder of the jury award ($142,054,256)—the portion not attributable to lost profits or reasonable royalties—is based on Samsung's profits for its infringement of the D'305 and D'677 Patents. Section 289 of Title 35 authorizes damages for design patent infringement of the amount of the infringer's "total profit" for each infringing sale. At trial, the parties agreed on Samsung's gross revenues from infringing sales ($854 million) and essentially agreed on the deductible costs of goods related to those sales ($623 million). *See* 2013 Trial Tr. 692:1-11; 692:25-693:8; 1014:21 1015:4; PDX100.17. The parties centrally disputed the amount of operating expenses to be deducted from Samsung's gross revenues. Davis testified that none of Samsung's claimed operating expenses was directly attributable to the infringing products and therefore Apple's infringer's profits award should be Samsung's gross revenues less its costs of goods, or approximately $231 million. *See* 2013 Trial Tr. 702:24-703:3. Samsung's damages expert, Michael Wagner, testified that all Samsung's operating expenses—including Samsung's overall logistical, advertising, temporary staffing, insurance, depreciation, travel, research and development, and general and administrative expenses, *see* 2013 Trial Tr. 961:4-964:10; SDX3960.002, SDX7001.005—should be allocated to each infringing phone and also deducted from Samsung's gross revenues, *see id* 1015:5-16; DX676. After deducting operating expenses, Mr. Wagner proposed a total infringer's profits award of approximately $53 million. *See* DX781.002.

The jury's award of infringer's profits falls exactly halfway between each side's proposed award. Samsung notes that this award of infringer's profits can also be viewed as 61.3960645% of Davis's proposed infringer's profits award. Samsung JMOL at 3.

1. Samsung's Motion for Judgment as a Matter of Law

Samsung's motion for judgment as a matter of law as to the jury's infringer's profits award is based on two distinct challenges: (a) the jury entered an improper compromise verdict, and (b) the jury improperly double counted infringing sales by awarding two types of damages for certain infringing sales. The Court addresses both challenges in turn.

a. Compromise Verdict

Samsung first contends that the jury's infringer's profit award is an improper compromise verdict. *See* Samsung JMOL at 28-29. This challenge is easily dismissed. A compromise verdict "'is one reached when the jury, *unable to agree on liability*, compromises that disagreement and enters a low award of damages.'" *Romberg v. Nichols*, 970 F.2d 512, 521 (9th Cir. 1992) (quoting *Nat'l R.R. Passenger Corp. v. Koch Indus.*, 701 F.2d 108, 110 (10th Cir. 1983)) (emphasis added), *vacated on other grounds*, *Nichols v. Romberg*, 506 U.S. 1075 (1993). Here, liability was not at issue because the first jury had already found that Samsung infringed Apple's valid patents. "Proof of damages is governed by a less strict standard than proof of liability." *Landes Const. Co., Inc. v. Royal Bank of Canada*, 833 F.2d 1365, 1373 (9th Cir. 1987). The Court agrees with Apple that the jury in the damages retrial "was entitled to choose a damages award within the amounts advocated by the opposing parties." *Spectralytics, Inc. v. Cordis Corp.*, 649 F.3d 1336, 1347 (Fed. Cir. 2011).

b. Double Counting

Samsung's second challenge warrants a more extensive analysis. Samsung attacks the jury's infringer's profits award on the ground that the verdict is the result of improper double counting More specifically, Samsung contends that the jury improperly awarded both lost profits and infringer's profits for the same infringing sales The jury was instructed that it could not award lost profits or reasonable royalties on any sales for which it also awarded infringer's profits. *See* Dkt. 2784 at 42 (Final Jury Instruction No. 34). Samsung contends that the jury disobeyed this instruction by averaging the parties' overall proposed infringer's profits awards even though Davis and Wagner disagreed as to the number of infringing sales to be used to calculate the infringer's profit award. Samsung JMOL at 30 Because Wagner's infringer's profits calculation captured some phones that Davis included in her lost profits calculation, Samsung contends the jury's averaging of the two proposals impermissibly awarded two forms of damages for the same infringing sale.

An example will help clarify the purported problem. The controversy here stems from the jury's damages award for the Infuse 4G ($99,943,987), which infringes both the '915 Patent and the D'677 Patent. Davis used a two-step process to calculate damages for the Infuse 4G. First, Davis opined, and the jury indisputably accepted, that Apple was entitled to $43,968,916 in lost profits for Infuse 4G sales that would have gone to Apple but for the infringement. *See* PX25G1.2 Second, with respect to all other sales of the Infuse 4G—i.e., sales that Samsung would have kept (for example because of a customer's loyalty to Samsung), sales that would have gone to a third-party, or sales that occurred after the design-around period—Davis opined that Apple was entitled to $91,165,035 in

infringer's profits. *See* PX25G1.4. In contrast, Wagner did not believe Apple was entitled to any lost profits, and therefore he attributed all the Infuse 4G sales to his proposed infringer's profits award of $42,942,776. *See, e.g.*, 2013 Trial Tr 994:20-995:1; DX781.002. Samsung contends that the jury necessarily and improperly awarded Apple lost profits and infringer's profits damages on some of the same Infuse 4G sales by adopting Davis's lost profits number, which captures some of the infringing Infuse 4G sales, and by also relying on Wagner's infringer's profits award, which captures all the infringing Infuse 4G sales including those that were part of Davis's lost profits calculation.

The Court finds that if Samsung is correct that the jury averaged both sides' proposed infringer's profits award, then Samsung is also correct that the jury improperly double counted. For the following reasons, however, Samsung's attempt to deconstruct the jury's infringer's profits award goes too far.

As an initial matter, the standard for evaluating a jury's damages verdict is generally lenient. The Court "must uphold the jury's finding of the amount of damages unless the amount is grossly excessive or monstrous, clearly not supported by the evidence, or based only on speculation or guesswork." *Yeti by Molly, Ltd. v. Deckers Outdoor Corp* , 259 F.3d 1101, 1107 (9th Cir. 2001). It will be a "rare case in which it is sufficiently certain that the jury['s damages] award was not based on proper consideration of the evidence" and therefore cannot stand. *In re First Alliance Mortg. Co.*, 471 F.3d 977, 1001 (9th Cir. 2006).

The proceedings here do not suggest that this is such a case. In the two cases on which Samsung relies to contend that the Court should reverse engineer the

jury's infringer's profits award, the Court of Appeals was concerned with whether the jury had relied on an *expert's* "incorrect damages calculation." *Id.* at 1002; *see Lucent Techs., Inc. v Gateway, Inc.*, 580 F.3d 1301, 1338 (Fed. Cir. 2009) ("What *Lucent's licensing expert proposed* here does not comport with the purpose of damages law or the entire market value rule.") (Emphasis added) Similarly, when this Court closely examined the jury verdict from the first trial, the Court did so out of concern that "the jury's awards for patent infringement . . . [were] based on *Mr. Musika's numbers*," which used "[erroneous] early notice dates." Retrial Order at 18 (emphasis added). Here, in contrast, Samsung maintains that its expert's damages analysis was proper, but that the jury nonetheless acted improperly because it relied on only part of his conclusions. In other words, Samsung asks the Court to conclude that the jury ignored the Court's instructions and reached an improper damages verdict all on its own, even though the Court has no reason to believe the jury was led even partially astray by improper expert testimony. In these circumstances, precedent does not require the Court to deconstruct the jury's award in search of error.

In any event, the Court does not agree with Samsung that the jury's error here is a "mathematical certainty." Samsung Reply at 2 n.1. Unlike the breakdown of the overall award between lost profits, reasonable royalties, and infringer's profit, Samsung fails to justify its contention that the jury *must have* settled on an infringer's profits amount by averaging the two experts' overall infringer's profits proposals. Even Wagner's declaration in support of Samsung's motion for judgment as a matter of law does not say the jury necessarily reached its conclusion in the way Samsung suggests, instead, Wagner merely concludes that

"[t]he percentage applied by the jury [to each product that infringed a design patent], 61.3980645%, *can be calculated* by averaging the Samsung profits numbers presented by Ms. Davis . . . and myself." Dkt. 2979 ¶ 14 (emphasis added).

Just as likely, the jury could have halved the overall operating expenses deducted by Wagner ($178,638,595) and deducted that halved amount ($89,319,298) from Davis's proposed infringer's profit award ($231,373,554). Following that logic, the jury would have arrived at the same number for an overall infringer's profits award ($142,054,256) and the same percentage reduction of Davis's proposed infringer's profit award (61.3980645%). Under this scenario, however, the jury would have relied solely on Davis's proposed infringer's profit award as a starting point—which indisputably did not include the lost profits units—and used only Wagner's overall operating expenses figure to reduce that amount. Thus, the jury would not have used Wagner's ultimate infringer's profit figure. In this way, the jury's award could still be a permissible choice "within the amounts advocated by the opposing parties," *Spectralytics*, 649 F.3d at 1347, without double counting any lost profits sales. Samsung does not explore, much less rebut, this or any other possible explanation for the jury's award. Because "juries are presumed to follow their instructions," *Richardson v. Marsh*, 481 U.S. 200, 211 (1987), and because the Court is able to construe the evidence here in a way that is consistent with the jury's verdict, *see Air-Sea Forwarders, Inc. v. Air Asia Co., Ltd.*, 880 F.2d 176, 189 (9th Cir. 1989), the Court concludes the jury reached its verdict without double counting.

Accordingly, Samsung's motion for judgment as a matter of law as to the jury's infringer's profits award is therefore DENIED.[8]

[8] Samsung also challenges the jury's infringer's profits award on the ground that Samsung's profit was not attributable to its infringement of Apple's design patents. Samsung JMOL at 30 Samsung acknowledges, however, that the Court has already rejected this argument as "clearly foreclosed by Federal Circuit precedent" Retrial Order at 12 (citing *Nike Inc. v Wal-Mart Stores, Inc*, 138 F.3d 1437, 1442-43 (Fed. Cir 1998)), *see Nike Inc.*, 138 F.3d at 1441 ("'It is expedient that the infringer's entire profit on the article should be recoverable,' for 'it is not apportionable' . . ") (quoting H.R. Rep. No. 1966 at 1 (1886), *reprinted in* 18 Cong Rec. 834 (1887)) Samsung provides no basis for the Court to reconsider that conclusion now, and the Court declines to do so.

August 25, 2015

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The Honorable Lucy H. Koh
United States District Court,
Northern District of California
280 South 1st Street, Courtroom 8, 4th Floor
San Jose, California 95113

Re: *Apple Inc. v. Samsung Electronics Co., Ltd. et al.*
No. 5:11-cv-01846-LHK

Dear Judge Koh:

On May 18, 2015, the Federal Circuit affirmed the validity and infringement judgments in this case with respect to Apple's design patents and utility patents, as well as "the damages awarded for the design and utility patent infringements appealed by Samsung." *Apple Inc. v. Samsung Elecs. Co.*, 786 F.3d 983, 989 (Fed. Cir. 2015). The Federal Circuit "remand[ed] for *immediate entry of final judgment* on all damages awards not predicated on Apple's trade dress claims." Id. at 1005 (emphasis added). On August 13, 2015, the Federal Circuit denied Samsung's petition for rehearing en banc. Samsung moved to stay issuance of the mandate on August 19, 2015. Today, on August 25, 2015, the Federal Circuit denied the motion to stay and issued the mandate. To assist the Court in carrying out the above portion of the mandate, Apple hereby submits a proposed final judgment, attached as Attachment A. As explained below, the amount of damages covered by the Court's mandate comes directly from the Federal Circuit decision and representations by Samsung to the Federal Circuit.

As Samsung acknowledged in its petition for rehearing en banc, the portion of the damages award affirmed by the Federal Circuit totals $548 million (*See* Attachment B (Samsung Fed. Cir. Petition For Rehearing En Banc) at 2 ("The panel reversed the award of $382 million in trade-dress dilution damages but affirmed the remaining $548 million in damages.").) More precisely, the amount is $548,176,477, which includes $398,940,864 for design patent infringement and $149,235,613 for utility patent infringement (*See* Attachment C (Samsung Opening Fed Cir. Br.) at 12, Attachment D (Apple Fed. Cir. Br.) at 21 n 1, 45, 67, 80, 86.) The parties further acknowledged that the damages award could be further broken down on a product-by-product basis as outlined in the attached proposed judgment. (*See* Attachment C at 9-14; Attachment D at 22.)

Accordingly, Apple respectfully requests that the Court enter partial final judgement for Apple in the amount of $548,176,477 pursuant to the Federal Circuit's mandate. A proposed form of judgement is attached.

Pursuant to the Federal Circuit's opinion of this Court, we anticipate further action concerning supplemental damages and the issues remanded for rehearing.

Respectfully submitted,

/s/ Harold J. McElhinny

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. 11-CV-01846-LHK

APPLE INC.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO. LTD., et al.,

Defendants.

PARTIAL FINAL JUDGMENT

Pursuant to the Federal Circuit's May 18, 2015 Order, judgment is entered against Samsung and in favor of Apple in the amount of $548,176,477 according to the affirmed damages awards for the following 18 products: the Captivate, the Continuum, the Droid Charge, the Epic 4G, the Exhibit 4G, the Galaxy Prevail, the Galaxy S II (AT&T), the Galaxy S II (Epic 4G), the Galaxy S II (Skyrocket), the Galaxy S II (T-Mobile), the Galaxy Tab, the Galaxy Tab 10.1 (WiFi), the Gem, the Indulge, the Infuse 4G, the Nexus S 4G, the Replenish, and the Transform.

IT IS SO ORDERED.

Dated: September 18, 2015

/s/ Lucy H. Koh

LUCY H. KOH
United States District Judge

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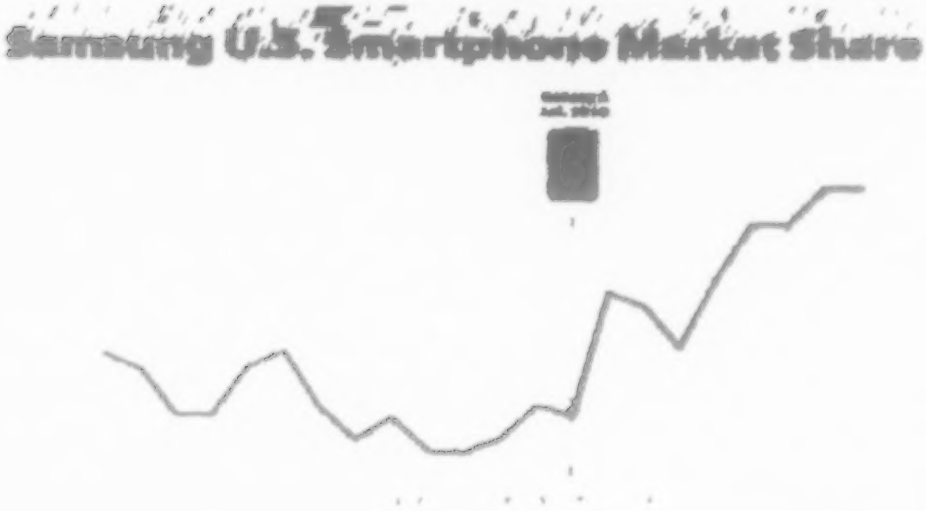
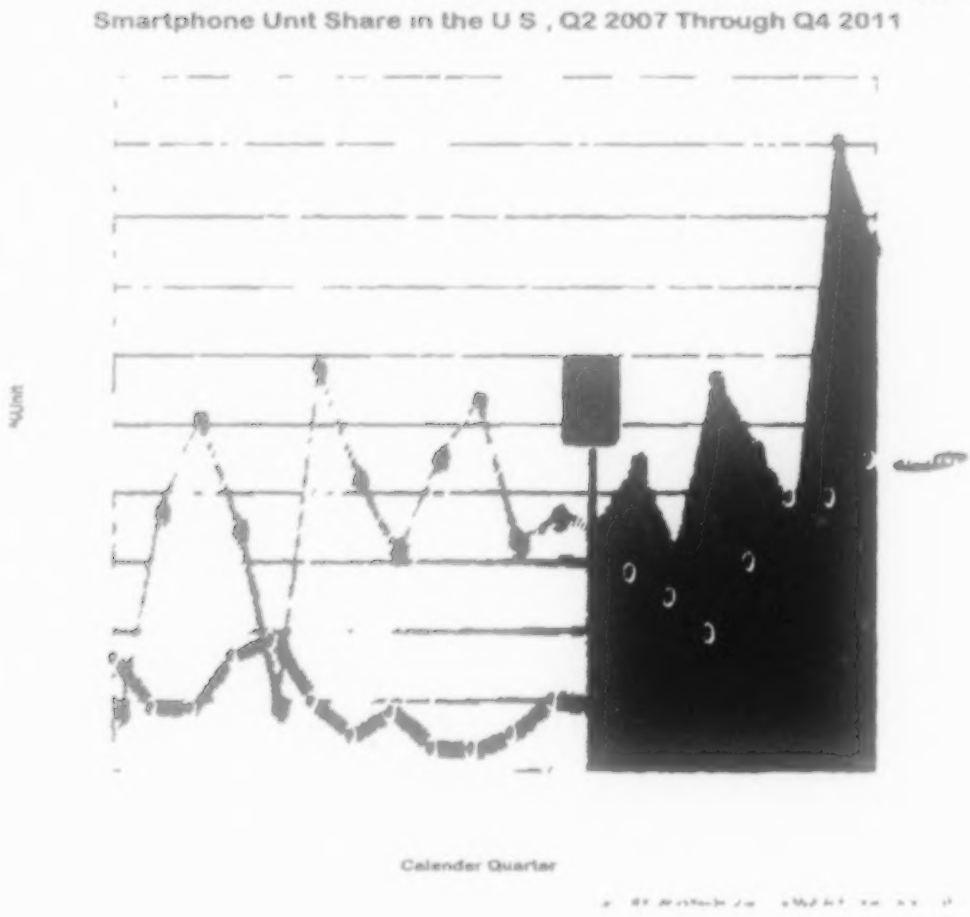


Defendants' Trial Demonstrative No 3909 59



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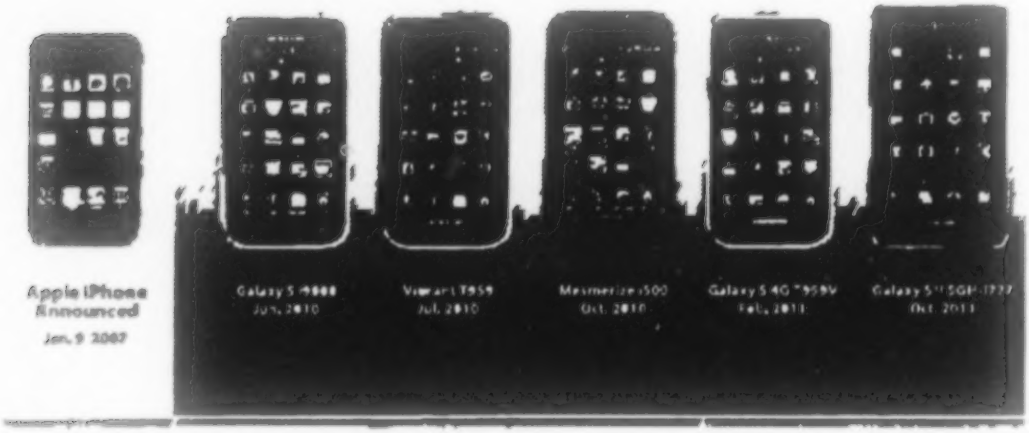
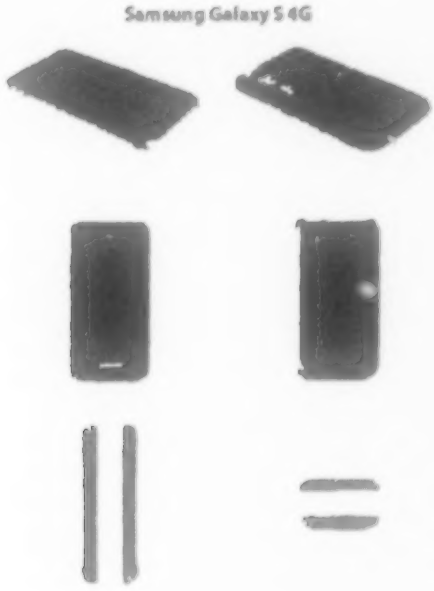


Plaintiff's Closing Trial Demonstrative No 13

Infringement of D'677 Patent

Plaintiff's Closing Trial Demonstrative No. 15

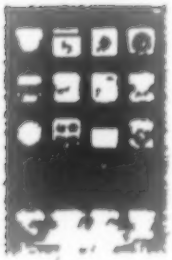
Infringement of D'087 Patent

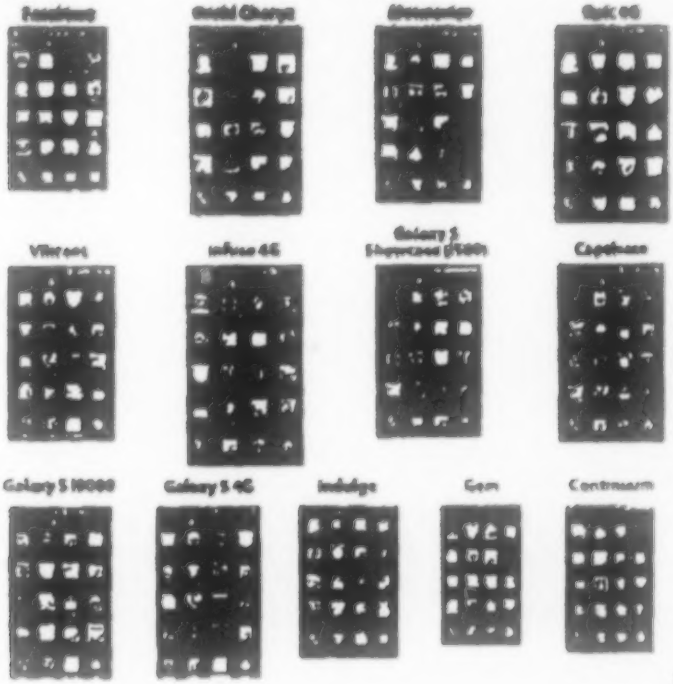


JX1019, JX1041

Plaintiff's Closing Trial Demonstrative No. 22

D'305 Patent Infringing Products





JX1042, PX21A

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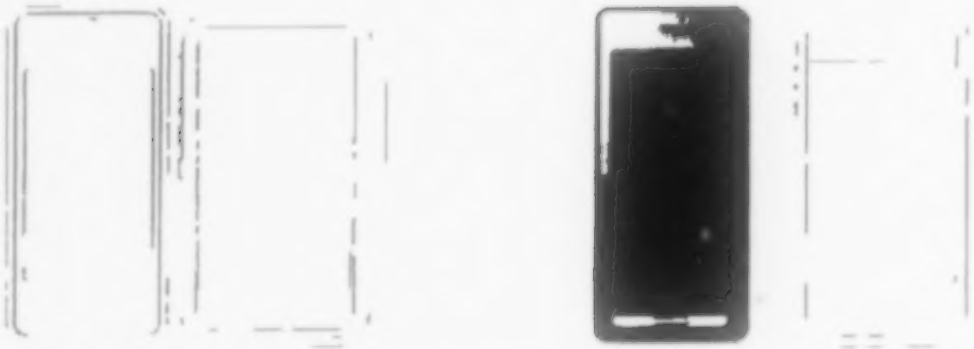

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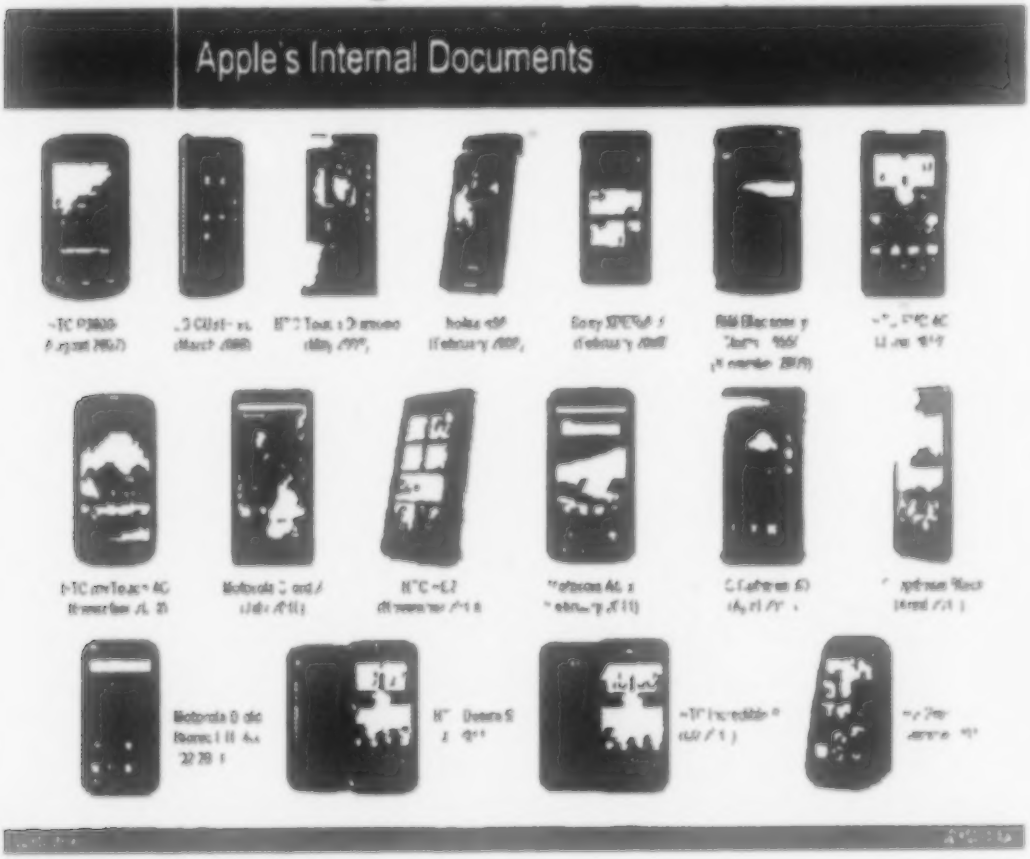
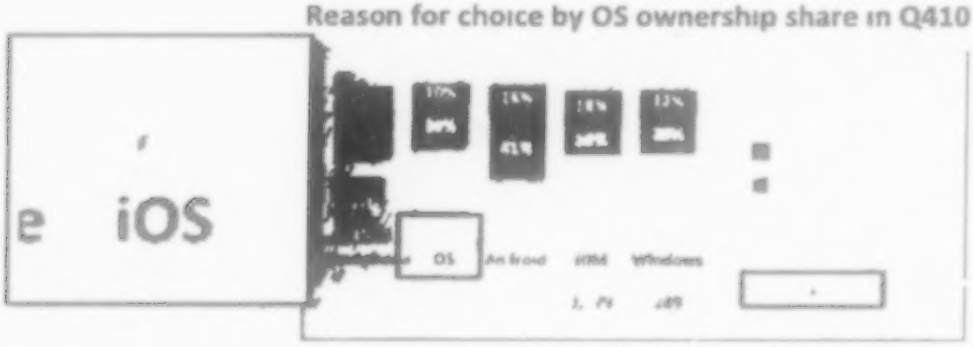


Defendants' Closing Trial Demonstrative No 5010 405

Design Is a Small Percentage of Why Consumers Buy

- Apple's own surveys confirm that "design/color" is only a small percentage (1%) of the reason for purchase



RECORD
AND
BRIEFS

Supreme Court, U.S.
FILED
JUN 1 - 2016
OFFICE OF THE CLERK

No. 15-777

IN THE

Supreme Court of the United States

SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC., AND SAMSUNG TELECOMMUNICATIONS AMERICA, LLC,

Petitioners,

v.

APPLE INC.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

JOINT APPENDIX
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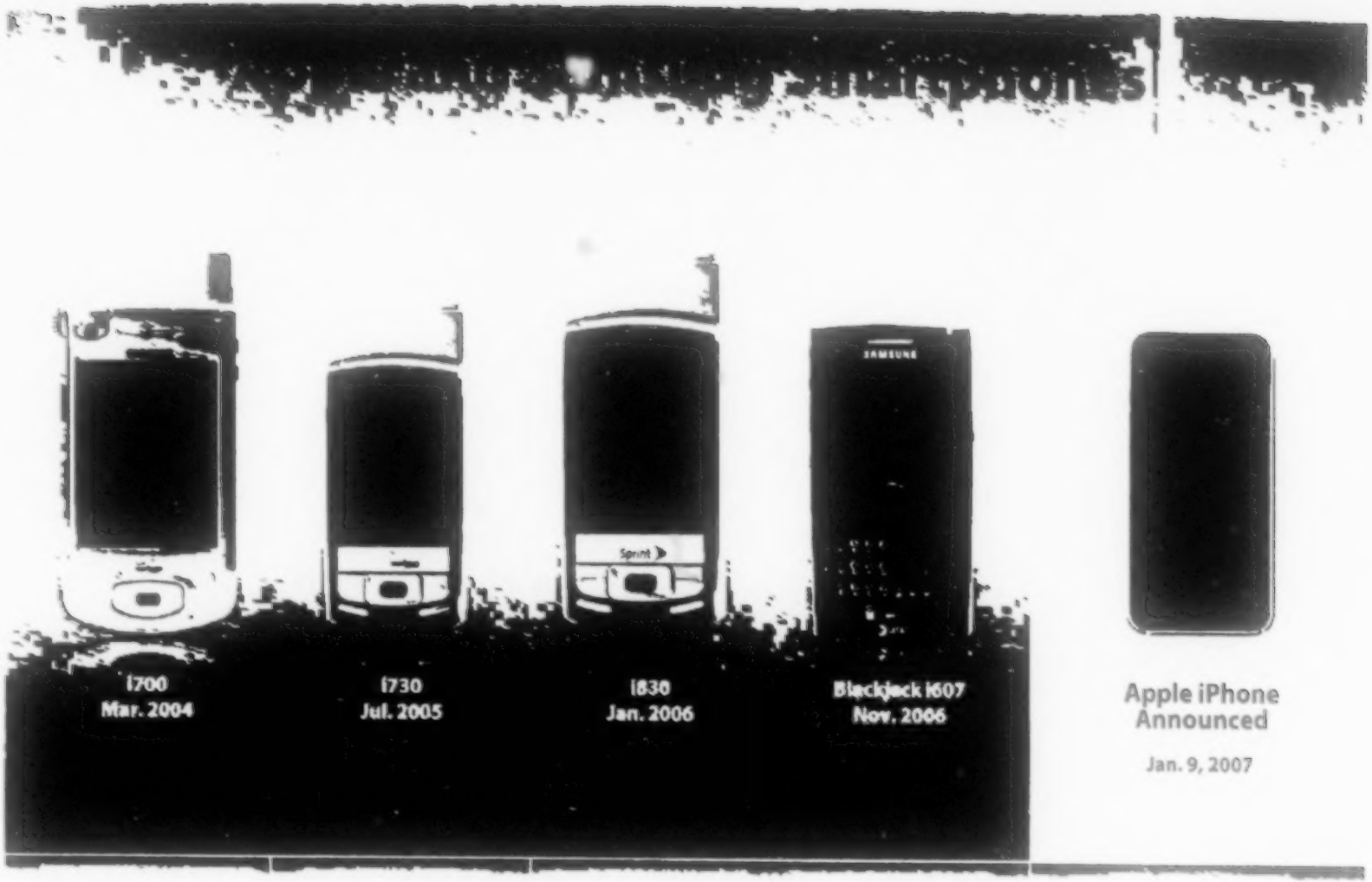

PLAINTIFF'S EXHIBIT NO. 3
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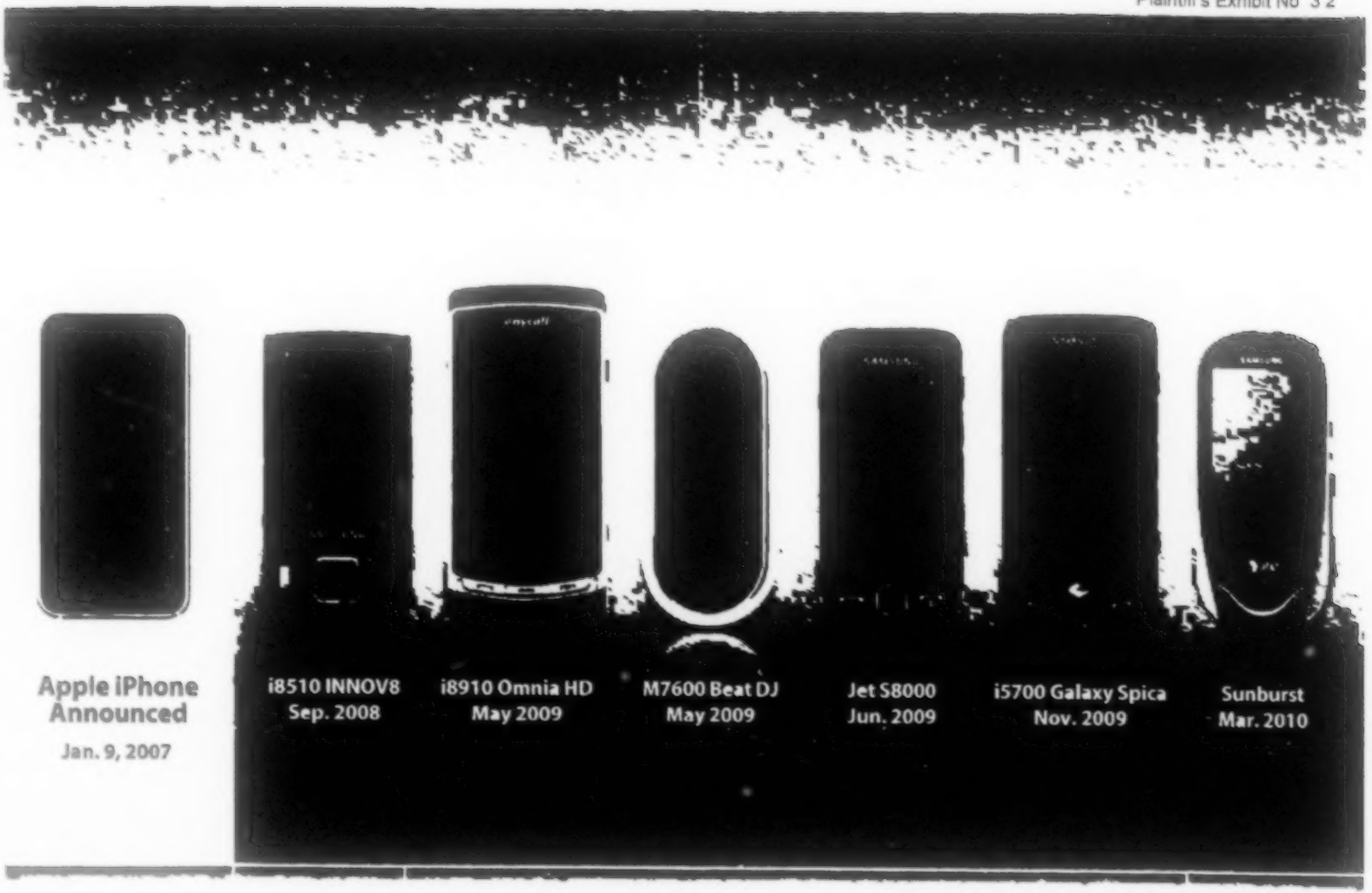

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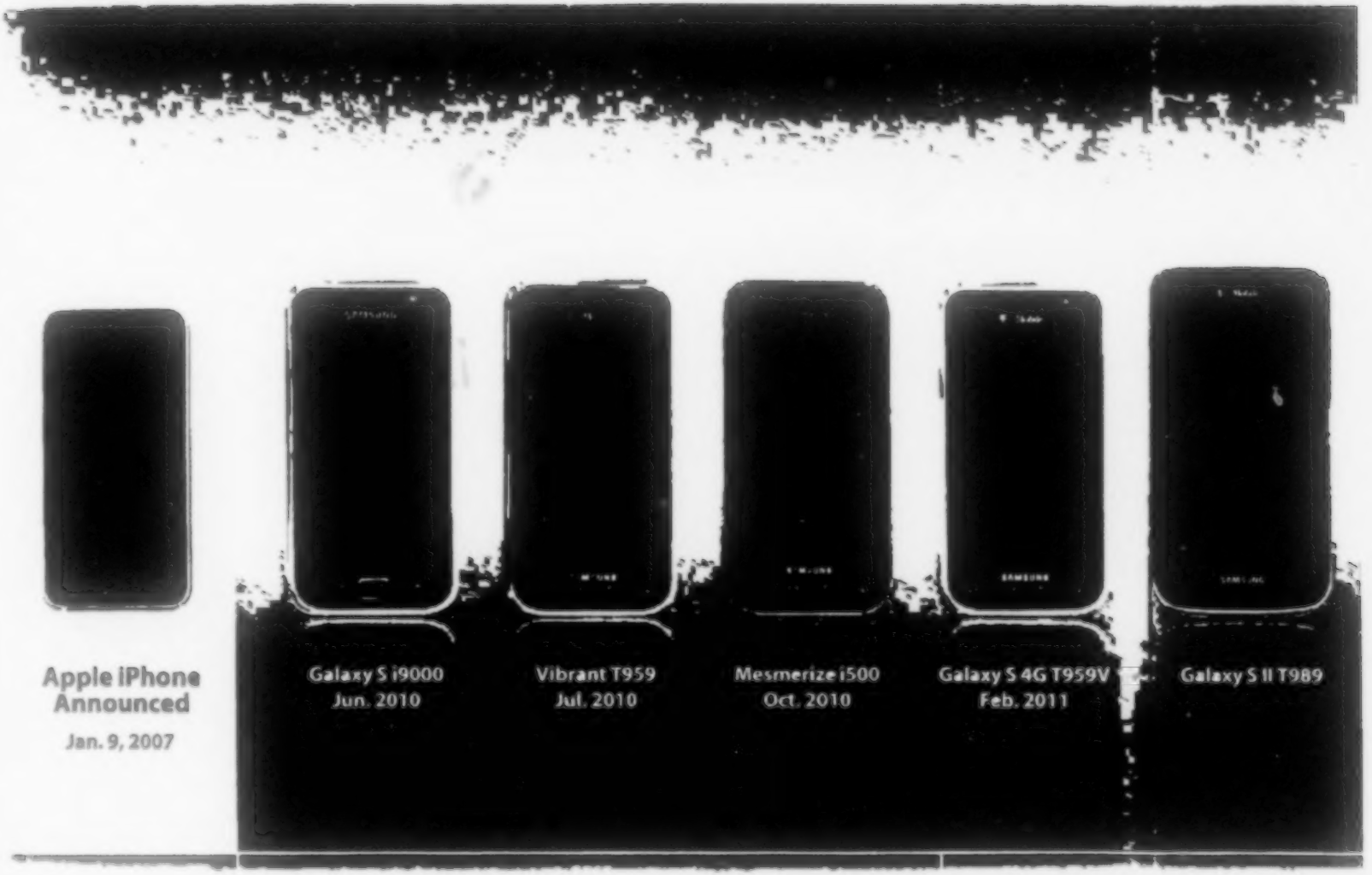

PLAINTIFF'S EXHIBIT NO 6

Summary of Press Reports Regarding Samsung Phone Designs

"Samsung Galaxy S: How Does It Measure Up to the Competition," by Ginny Mies *PCWorld*, June 29, 2010

This article reviews the Galaxy S, indicating that the reviewer was "surprised by how familiar it looked " The reviewer explained the familiarity "[t]he design is actually very iPhone 3GS-like with an all black, shiny plastic body and minimal buttons on the phone's face "

"Samsung Vibrant: A Standout Multimedia Phone," by Ginny Mies *Washington Post*, July 12, 2010

This article reviews the Samsung Vibrant, explaining that "[l]ike the European Galaxy S, the Vibrant resembles an iPhone 3GS "

"First Look: Samsung Vibrant Rips Off iPhone 3G Design," by Priya Ganapati *Wired*, July 15, 2010

This article reviews the Samsung Vibrant, stating that "Samsung's latest phone, the Vibrant, has the body of an iPhone and the brains of an Android " The article continues "[t]he Vibrant's industrial design is shockingly similar to the iPhone 3G The rounded curves at the corners, the candybar shape, the glossy, black finish and the chrome-colored metallic border around the display The Vibrant even has its volume and ringer buttons in almost the same spot as the iPhone 3G " The review also states that "the square icons are, again, very similar in their looks to the iPhone 3G's " The article also describes the Vibrant as

having a "derivative design" and that "there's little to make the phone notable, apart from its striking similarity to the iPhone " The article ends with photo of the two phones side-by-side, prefaced with a comment to "[c]heck out the photo of the Samsung Vibrant next to the iPhone 3G below "

"Samsung Galaxy S Review: T-Mobile Vibrant and AT&T Captivate," by Seth Weintraub *CNN Money*, July 18, 2010

This article reviews two Samsung Galaxy S phones, including the Vibrant The article states that "[t]he Vibrant looks like a thinner, lighter — but also bigger — iPhone 3GS " The reviewer continues that he "prefer[s] the rounded, soft iPhone 3GS-type plastic that the Galaxies have "

"Samsung Vibrant Review," by Brian Neal *Laptop*, July 20, 2010

This article reviews the Samsung Vibrant, stating that "[a]t a glance, the chrome-like border, edge to edge glass display (overlying black plastic), and curved candy bar shape of the Vibrant could easily be mistaken for the iPhone 3GS " The article continues "At first glance, the UI looks quite similar to iOS The phone icon in particular looks nearly identical to the one in iOS, and the application screen has a static black background (which saves battery life) where you swipe left to right to view your installed apps like the iPhone, instead of the traditional vertical scrolling for Android phones "

"Samsung Vibrant," by Lisa Gade *MobileTechReview*, July 21, 2010

This article reviews the Samsung Vibrant, stating that "[a]t first glance, the Vibrant looks like a thinner

iPhone 3GS, complete with curved plastic back and a front face dominated by glass and a black surround "

"Galaxy Phones from Samsung Are Worthy iPhone Rivals," by Walter S. Mossberg *The Wall Street Journal*, July 22, 2010

This article reviews two Samsung Galaxy S phones, including the Vibrant The article states that "[t]he T-Mobile Vibrant has rounded corners and a prominent border that make it look very much like last year's iPhone 3GS model "

"Samsung Vibrant Review," by Phil Nickinson *AndroidCentral*, July 27, 2010

This article reviews the Samsung Vibrant and states that "[t]he Samsung Vibrant inevitably will be compared to previous versions of the iPhone, thanks to its rounded corners and plastic shell " It also states "Don't worry that it sort of looks like the iPhone "

"Samsung Vibrant Review," by Stewart Wolpin *Digital Trends*, July 30, 2010

This article reviews the Samsung Vibrant and states that "[w]ith its front silver frame, the smooth, rounded Vibrant bears a resemblance to the first iPhone " The article also states that "[f]or the Galaxy S phones, Samsung has changed the app menu from the usual vertical slide-up screen to an iPhone-like four-by-four grid of icons arrayed across a series of swipable horizontal screens "

"Samsung Vibrant Review," by Antoine Wright *Brighthand*, August 4, 2010

This article reviews the Samsung Vibrant and states that "the Vibrant seems as if it takes no shame in looking like an iPhone 3GS It even caught a few people off guard until they saw the display and, like

myself, realized that this was definitely something different."

"Review: Samsung Vibrant," by Kelcey Lehrich *Electronista*, August 15, 2010

This article reviews the Samsung Vibrant and states "The Vibrant, even more so than most other versions, is roughly the same size and shape as an iPhone." The article includes a photographic side-by-side comparison between the Apple iPhone 4 and the Samsung Vibrant.

"Review: Samsung Galaxy S Vibrant," by Mike Yawney *The Review Crew*, August 15, 2010

This article reviews the Samsung Galaxy S Vibrant and states "Samsung's Galaxy S Vibrant is one sleek looking phone. In fact when I first unboxed it at the office many walked by and asked if it was an iPhone." The article includes a photographic side-by-side comparison between the Apple iPhone 4 and the Samsung Galaxy S Vibrant.

"Samsung Vibrant Looks Like an iPhone, Has Battery Life to Match," by Terrence Russell *Wired*, August 16, 2010

This article reviews the Samsung Vibrant and states "First, let's settle one of the biggest arguments surrounding this phone. Yes, the Vibrant closely resembles a certain bestselling smartphone. iPhone Android users within the WIRED office agreed. The Blackberry clique concurred. Even Apple acolytes conceded that there's something unmistakably familiar about the Vibrant's looks."

"Review: Samsung Vibrant is the Flagship of the Galaxy S Fleet," by Jason Hiner *TechRepublic*, September 16, 2010

This article reviews the Samsung Vibrant and states "For all of its high-end features, the Vibrant doesn't sacrifice as much in design as the oversized HTC EVO or Motorola Droid X The Vibrant is much thinner, lighter, and easier to fit in a pocket, belt case, or handbag It also has an attractive — if not flashy — look The designers were obviously mimicking the look of the old iPhone (pre-iPhone 4) with the chrome edge around the screen and the plastic backing "

"Samsung Fascinate Review: How Verizon Meddling Ruined an Excellent Android Phone," by Jason Hiner

***TechRepublic*, October 25, 2010**

This article reviews the Samsung Fascinate and states "The Fascinate is remarkably slim and attractive It is reminiscent of the iPhone 4 in that regard, although not made of the same top-notch materials "

"Samsung Mesmerize: A Top-Notch Galaxy Phone," by Armando Rodriguez *PC World*, November 23, 2010

This article reviews the Samsung Mesmerize and states "Though, as noted, this phone is nearly identical to the Samsung Vibrant, it is slightly lighter (0 34 ounces lighter, to be exact) and a bit taller Coming in at 4 92 by 2 53 by 0 39 inches, the Mesmerize won't feel bulky in your hand or pocket Like its Verizon cousin, its sleek and streamlined design feels very reminiscent of the iPhone 3GS "

"Samsung Vibrant Review," by Adam Z. Lein *Pocketnow*, January 25, 2011

This article reviews the Samsung Vibrant The article states that the Vibrant is "the most blatant

iPhone clone we've seen so far The hardware, the software UI all scream iPhone clone "

"Watch Out iPhone: Samsung's Galaxy S II Is Hot," by Daniel Ionescu *PC World*, May 9, 2011

This article describes the Samsung Galaxy S II and states "If the Samsung Galaxy S II looks familiar it's because it resembles Apple's popular iPhone 4 "

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PLAINTIFF'S EXHIBIT NO 7

Accused Products

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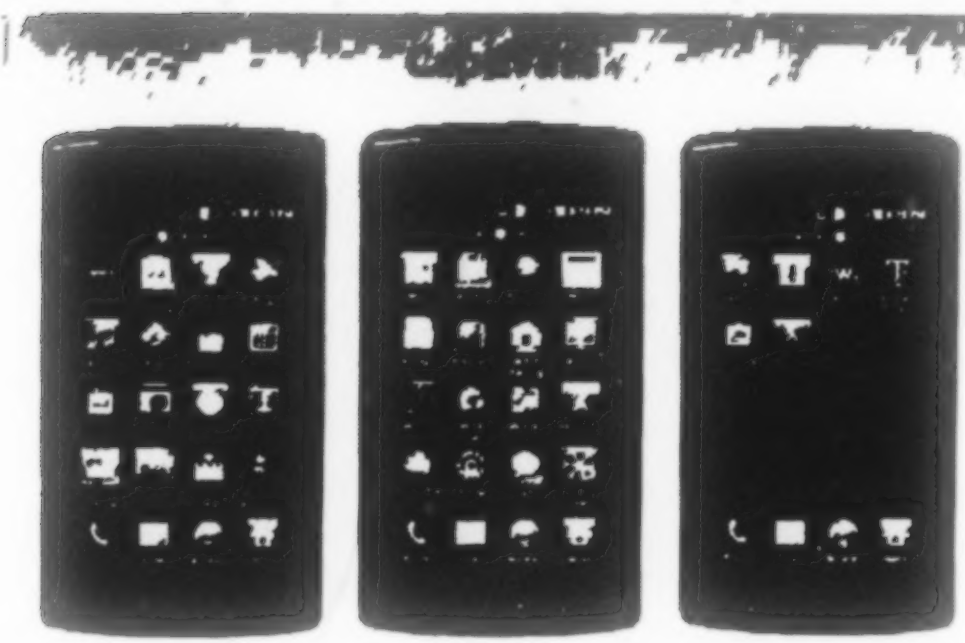
Acclaim

Plaintiff's Exhibit No 7 3

Plaintiff's Exhibit No 7 4



Views corresponding to D'305

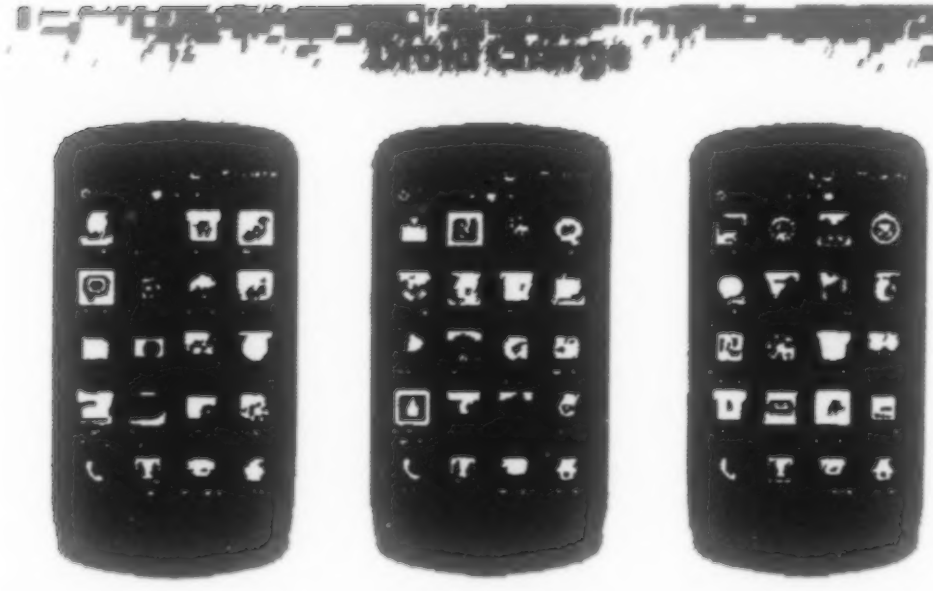
Plaintiff's Exhibit No 7 5

Plaintiff's Exhibit No 7 6

Views corresponding to D'305

Plaintiff's Exhibit No 7 7

Plaintiff's Exhibit No 7 8



Views corresponding to D'305

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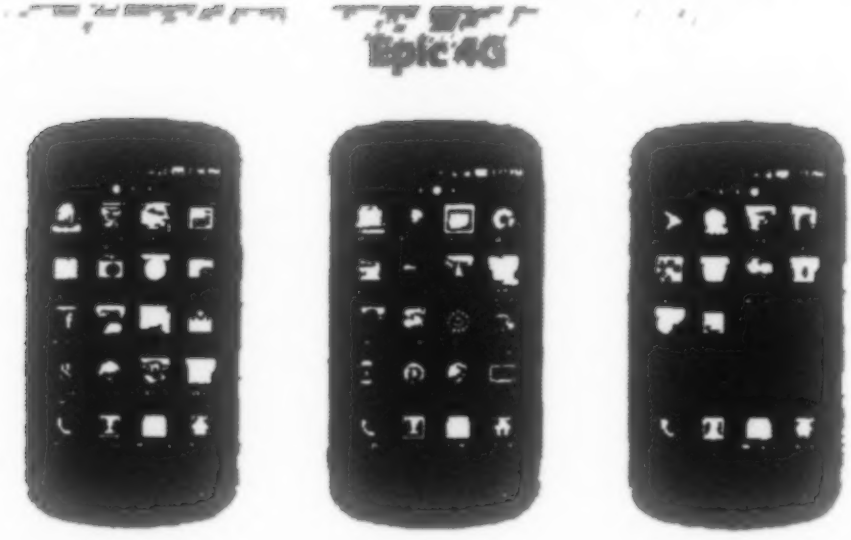


Views corresponding to D'305

Plaintiff's Exhibit No 7 11

Plaintiff's Exhibit No 7 12

Plaintiff's Exhibit No 7 13

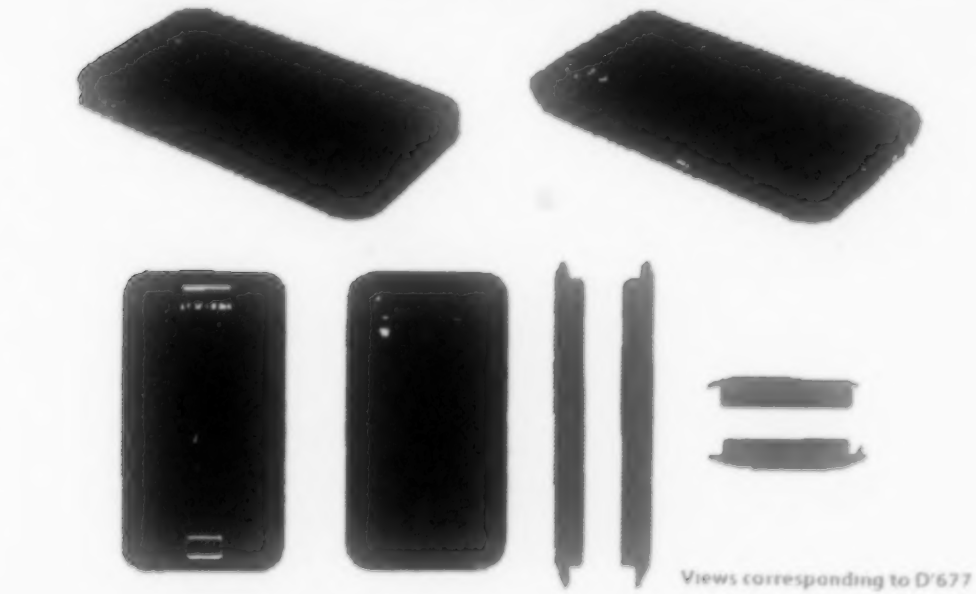
Views corresponding to D'677

Plaintiff's Exhibit No 7 14

Views corresponding to D 305

Plaintiff's Exhibit No 7 15

Plaintiff's Exhibit No 7 16

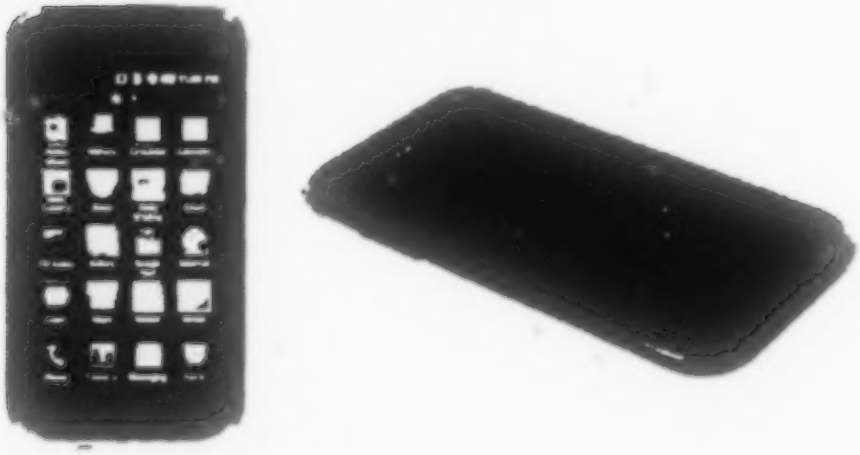


Plaintiff's Exhibit No. 7.17

Galaxy Prevail

Plaintiff's Exhibit No. 7.18

Galaxy S (i9000)



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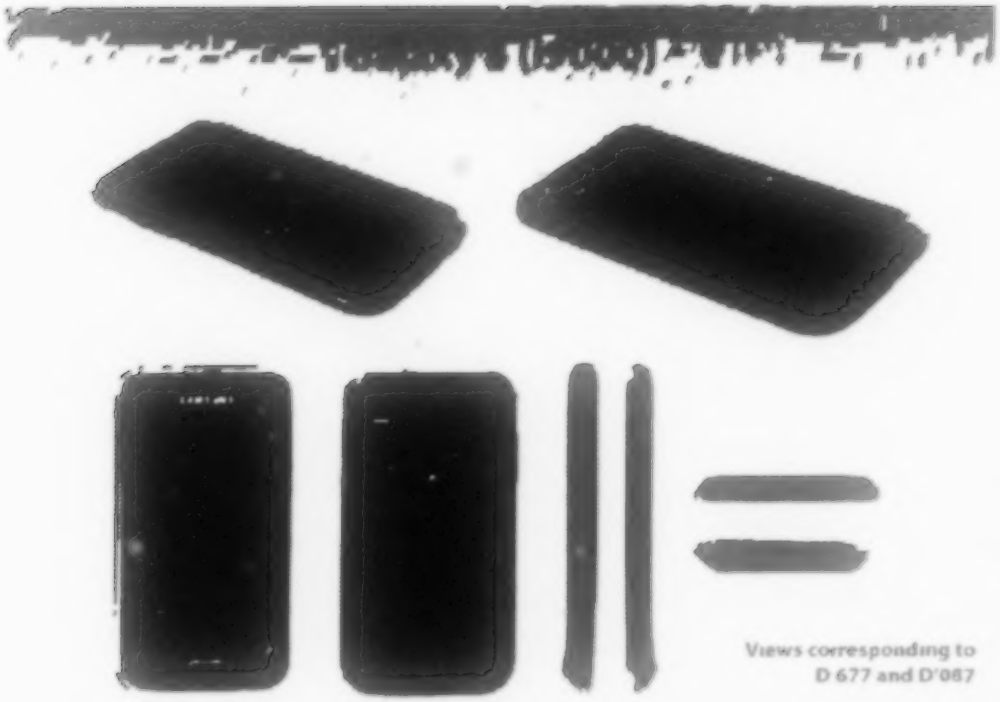


Views corresponding to
D 677 and D'087

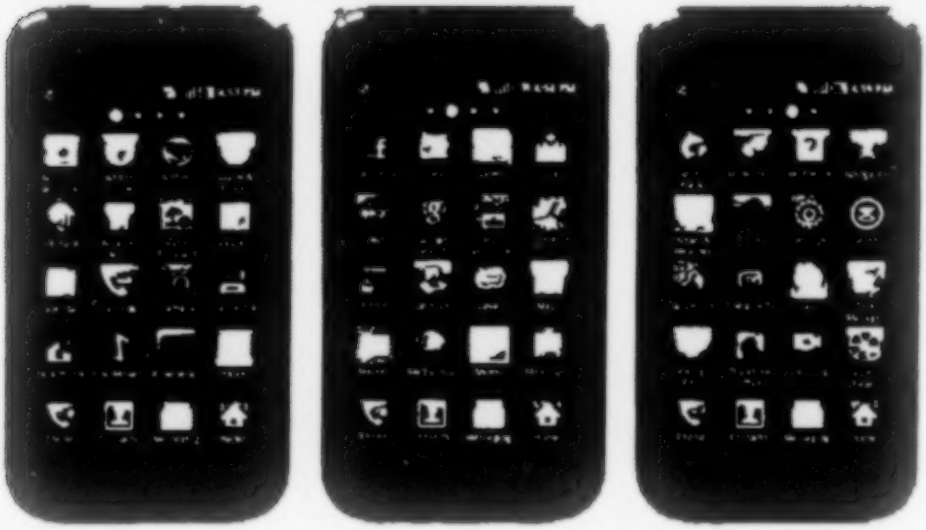
Plaintiff's Exhibit No 7 20

Views corresponding to D 305

Plaintiff's Exhibit No 7 21

Plaintiff's Exhibit No 7 22

Plaintiff's Exhibit No 7 23



Views corresponding to D'305

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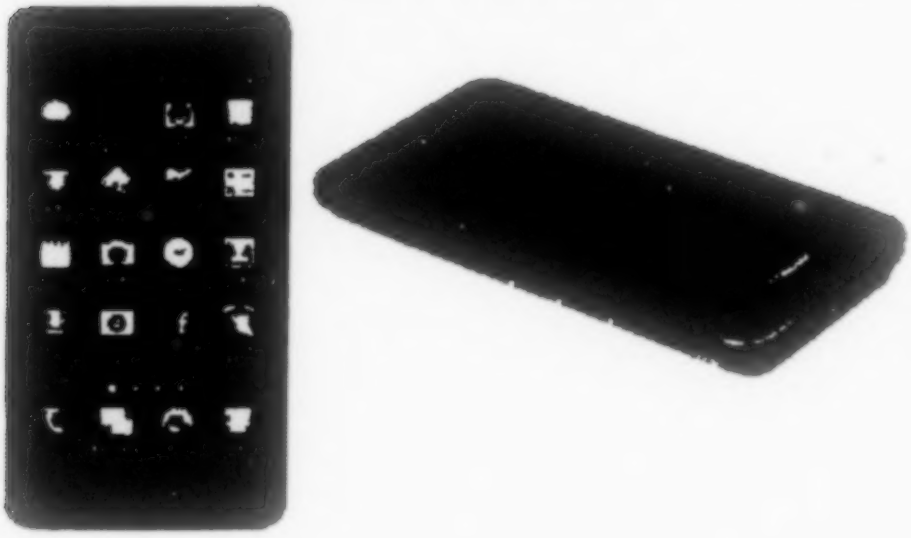

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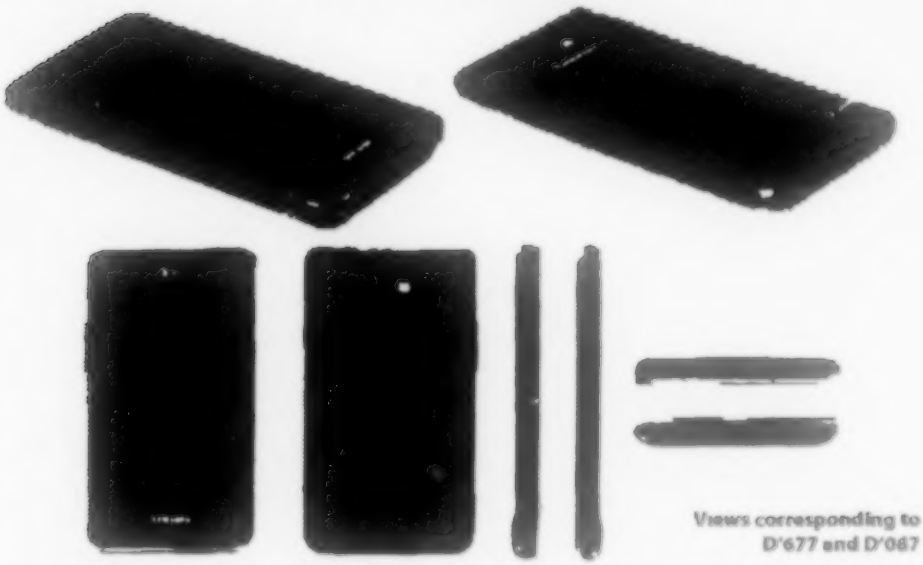
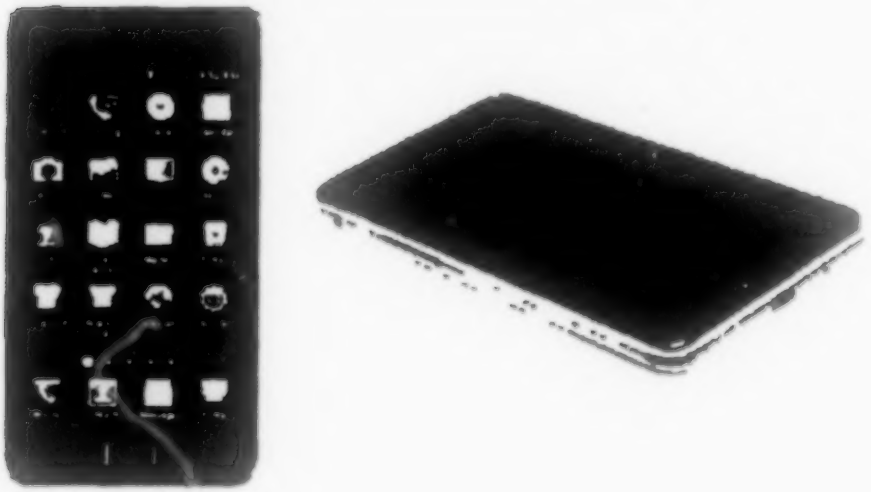


Views corresponding to D'677 and D'087

Plaintiff's Exhibit No 7 26



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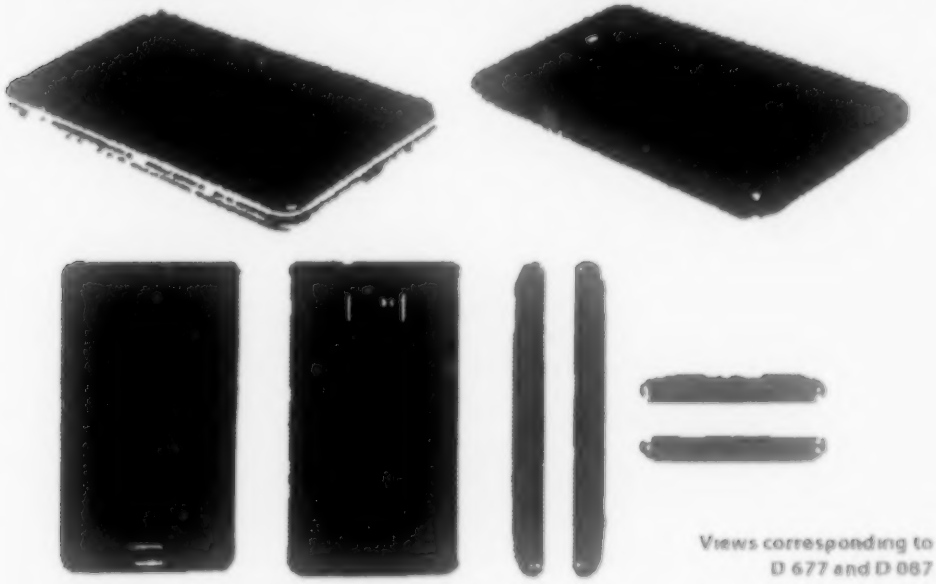
Galaxy S II (i9100)



Views corresponding to D'677 and D'087

Plaintiff's Exhibit No. 7.28

Galaxy S II (T-Mobile)

Plaintiff's Exhibit No. 7.29

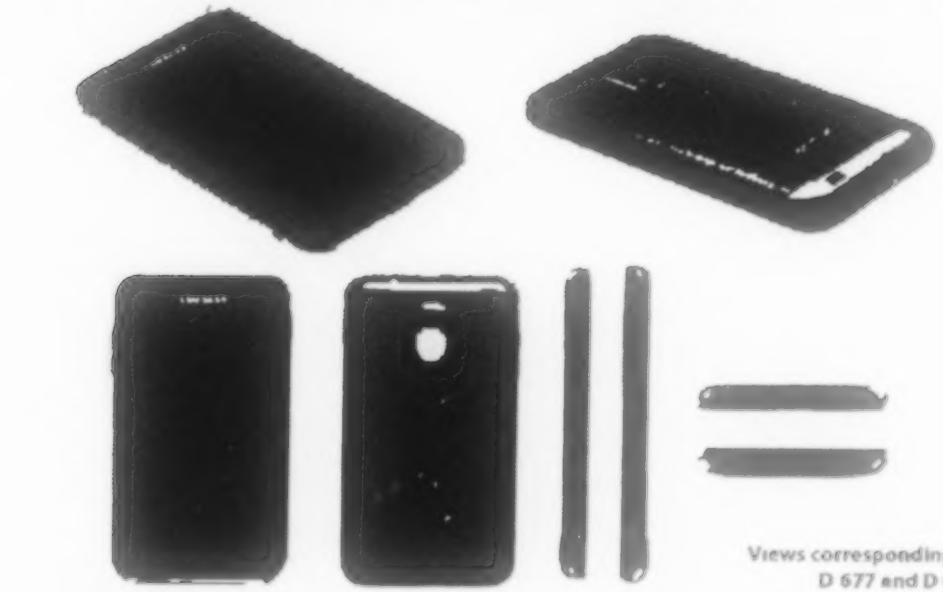
Galaxy S II (T-Mobile)

Views corresponding to D'677

Plaintiff's Exhibit No. 7.30

Galaxy S II (Epic 4G Touch)

Plaintiff's Exhibit No 7 31



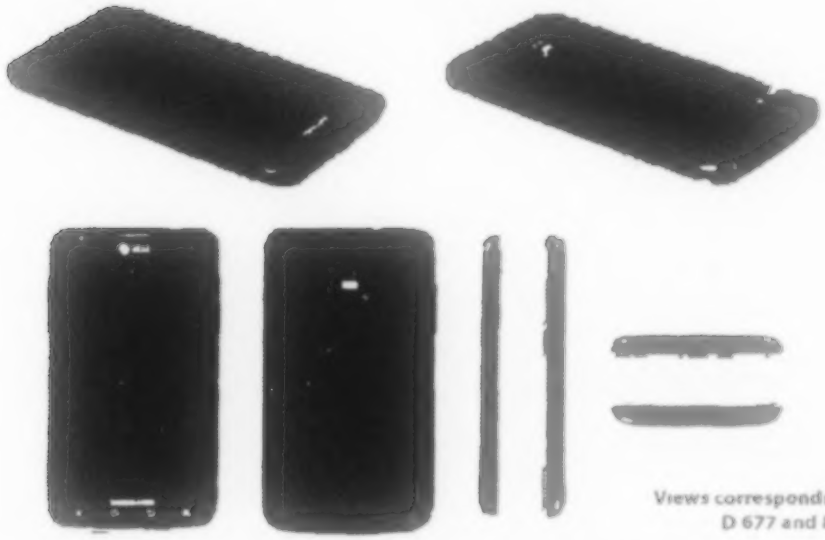
Views corresponding to
D 677 and D 087

Plaintiff's Exhibit No 7 32

Galaxy S II (Skyrocket)

Plaintiff's Exhibit No 7 33

Galaxy S II (Skyrocket)



Views corresponding to
D 677 and D 087

Plaintiff's Exhibit No 7 34

Galaxy S Showcase (I500)

Plaintiff's Exhibit No. 7.35

Views corresponding to D'677

Plaintiff's Exhibit No. 7.36

Views corresponding to D'305

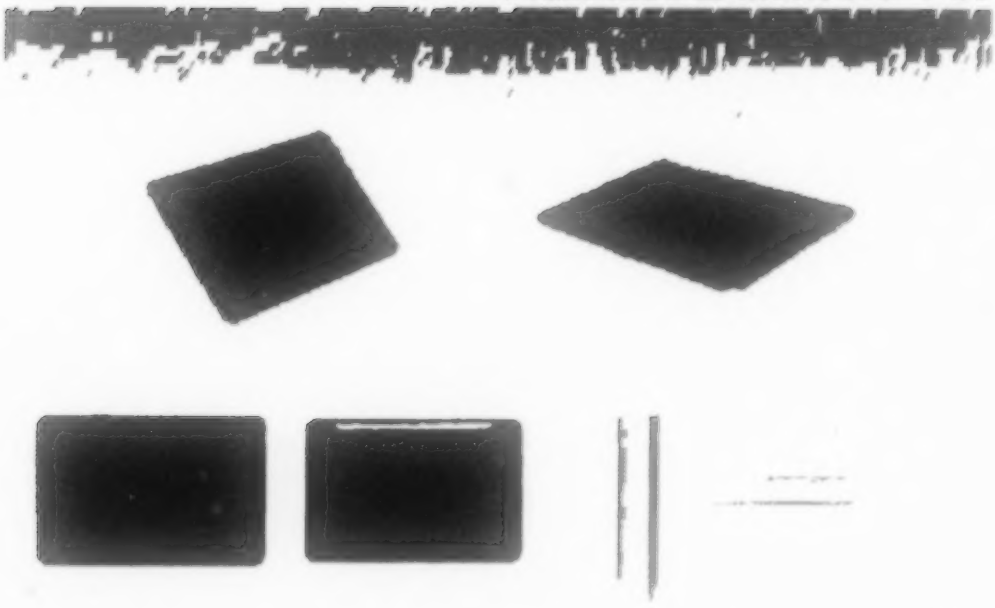
Plaintiff's Exhibit No. 7.37

Galaxy Tab

Plaintiff's Exhibit No. 7.38

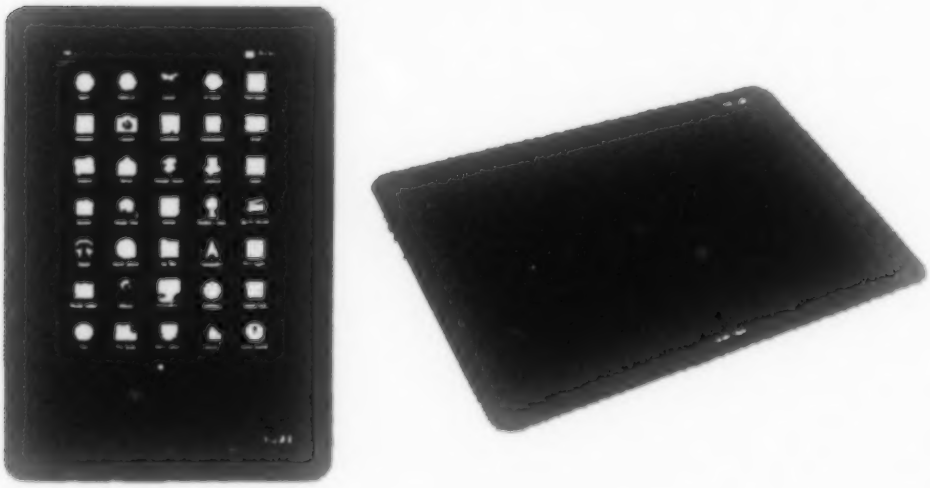
Galaxy Tab 10.1 (WiFi)

Plaintiff's Exhibit No 7 39



Views corresponding to D 889

Plaintiff's Exhibit No 7 40



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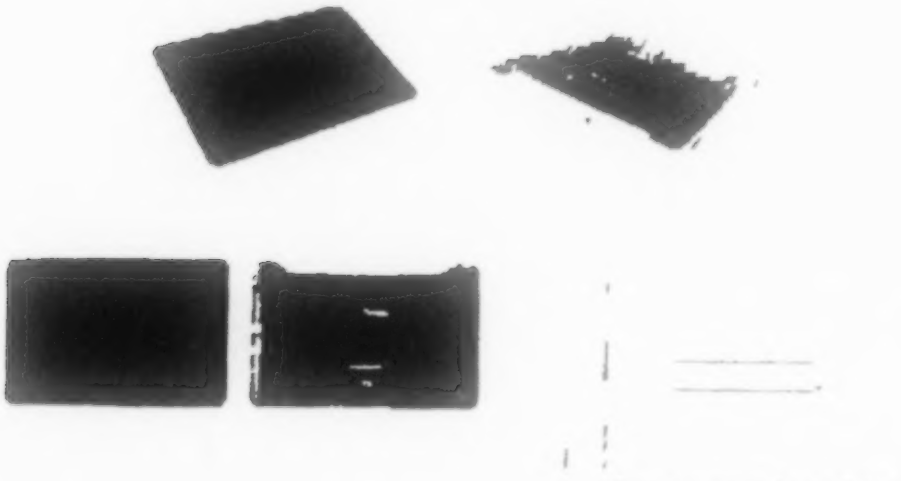
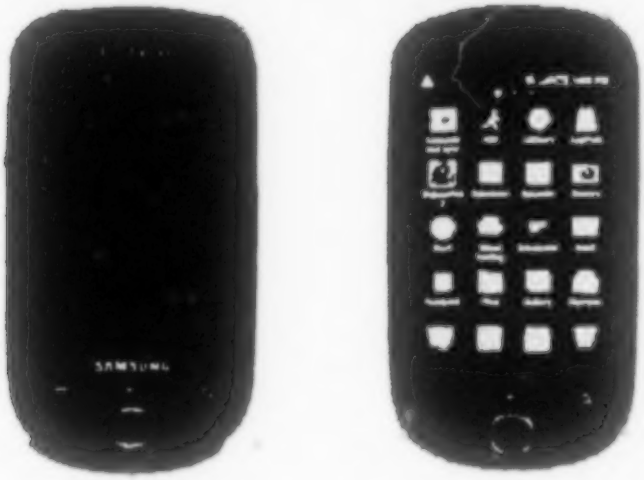


Views corresponding to D 889

Plaintiff's Exhibit No 7 42

Plaintiff's Exhibit No 7 43



Plaintiff's Exhibit No 7 44

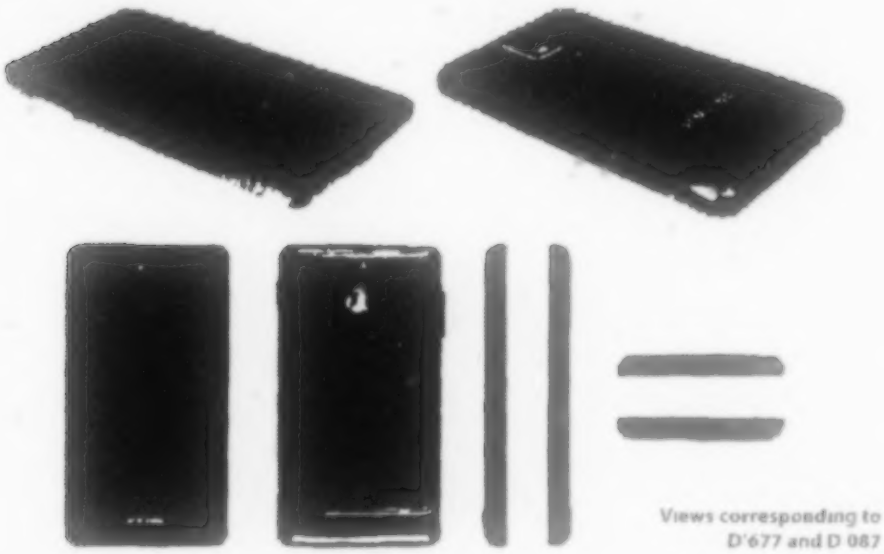
Views corresponding to D'305

Plaintiff's Exhibit No 7 45

Infuse 4G

Plaintiff's Exhibit No 7 46

Infuse 4G



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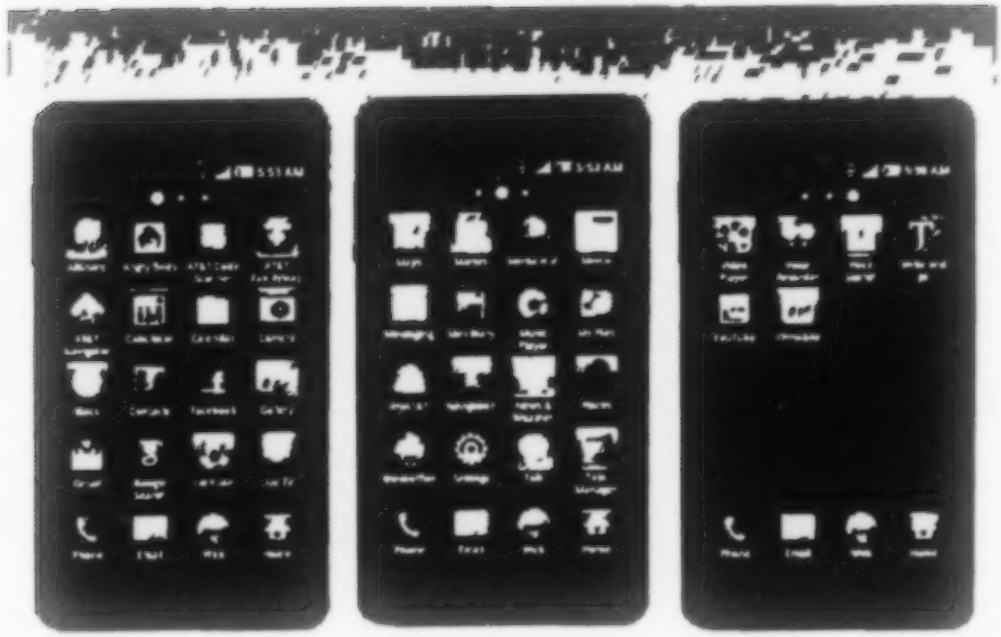


Views corresponding to D'305

Plaintiff's Exhibit No 7 48

Plaintiff's Exhibit No 7 49

Mesmerize

Plaintiff's Exhibit No 7 50

Mesmerize

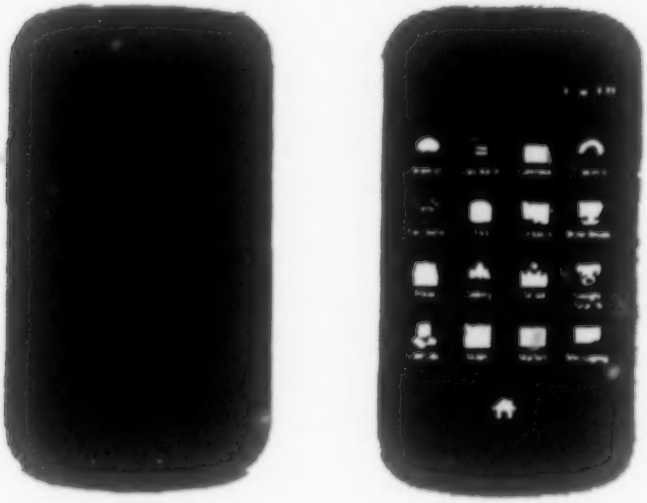
Plaintiff's Exhibit No 7 51

Views corresponding to D'305

Plaintiff's Exhibit No 7 52

Plaintiff's Exhibit No 7 53

Nexus S 4G



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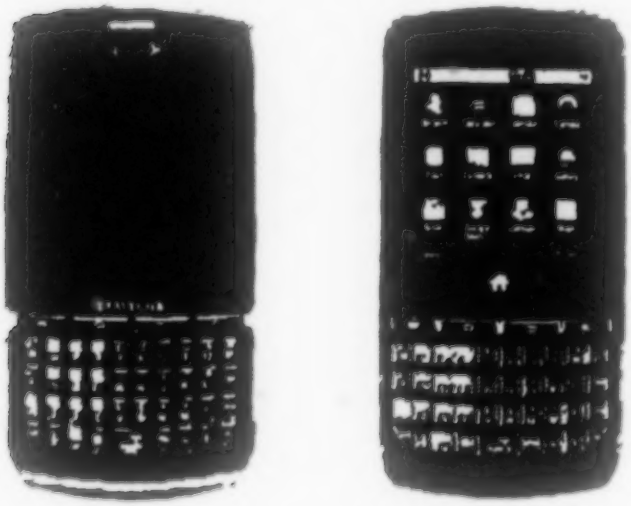
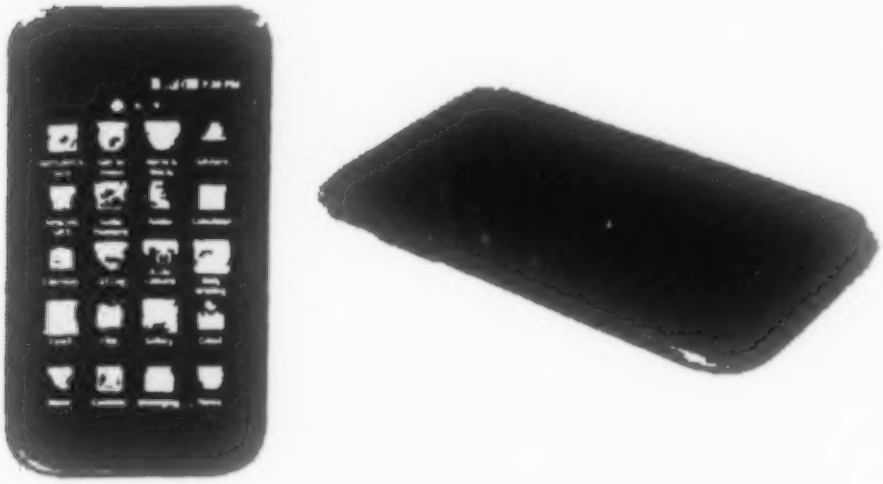


Plaintiff's Exhibit No 7 55

Plaintiff's Exhibit No 7 56

Plaintiff's Exhibit No 7 57

Vibrant



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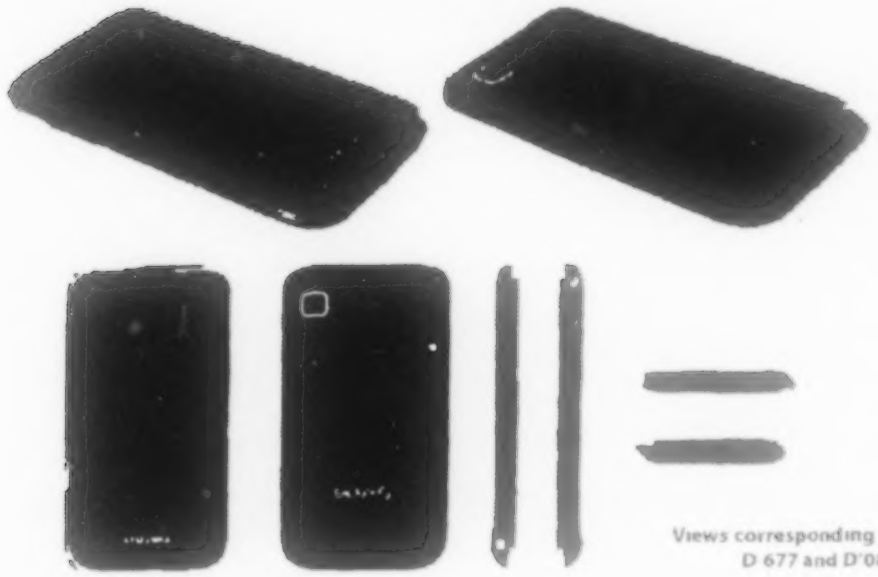
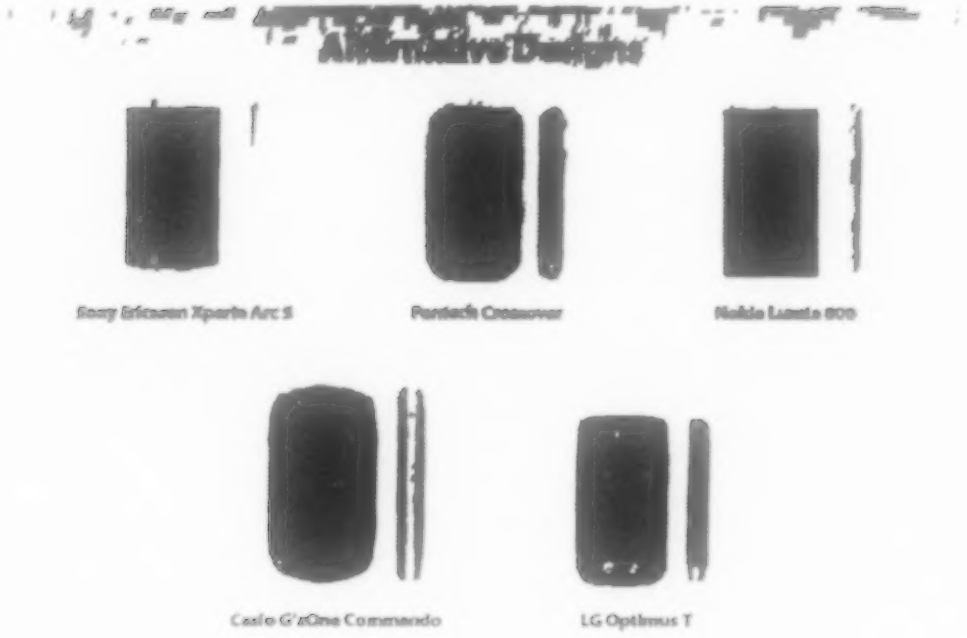


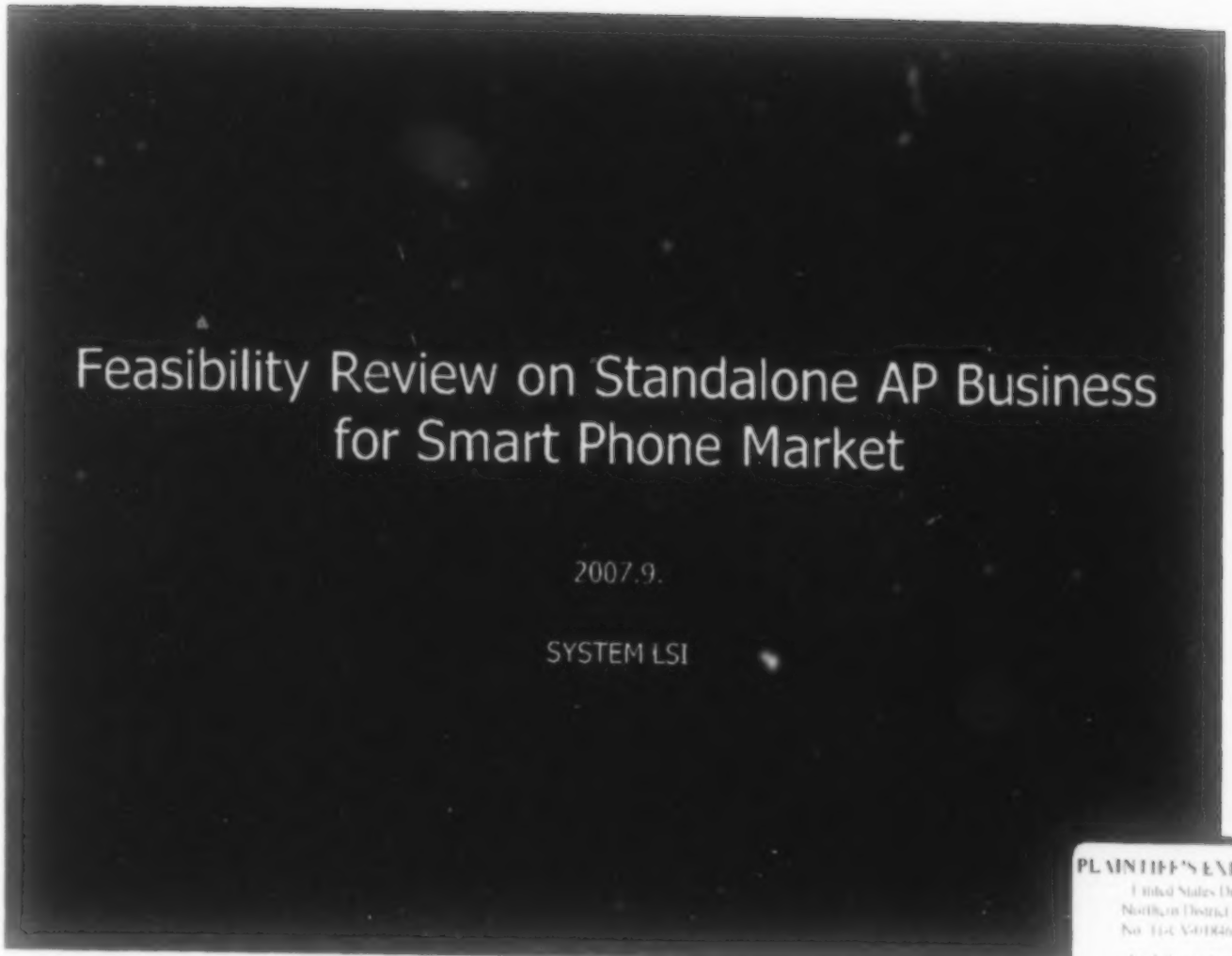
Views corresponding to
D 677 and D'087

Plaintiff's Exhibit No 7 59

Views corresponding to D'305

PLAINTIFF'S EXHIBIT NO 10





PLAINTIFF'S EXHIBIT NO. 34
United States District Court
Northern District of California
No. 11-C V-01846-LHK (PSG)
Apple Inc. v. Samsung Elecs.
Date Admitted By

Translation

Executive Summary

1 **Smartphone market forecast and trends: SW plays a key role in mobile phone market-HLOS[1]**

- HLOS installation in feature phones is accelerated and occupies 35% of the 2011 mobile phone market
- Smartphones evolving into portable PCs, and full browsing and multimedia functions are improving

2 **Smartphone modems and AP market forecast: If one-chip[2] is favored, two-chip[3] MS is forecasted to be 26% in 2011**

- If all respond with two-chip in 'mid-end' market, two-chip has outlook of 57% MS in 2011
- Major customers selected one-chip +HWA[4] as main platform for the mass market

3 **Competition in modem and AP markets: two-chip even more disadvantaged due to emergence of one OS[5] exceeding simple one chip**

- Because most chip vendors have procured 3 5G modem technology, modem is essential for competing
- With the appearance of one OS, it is possible for one-chip to deal with high-end market by diversifying line-up
- One-chip vendors[6] can sufficiently provide two-chip solutions as well thru the combination of modem / AP if the market demands

4 **Our slim modem[7] strategy: essential to secure total platform roadmap and AP self-sustenance**

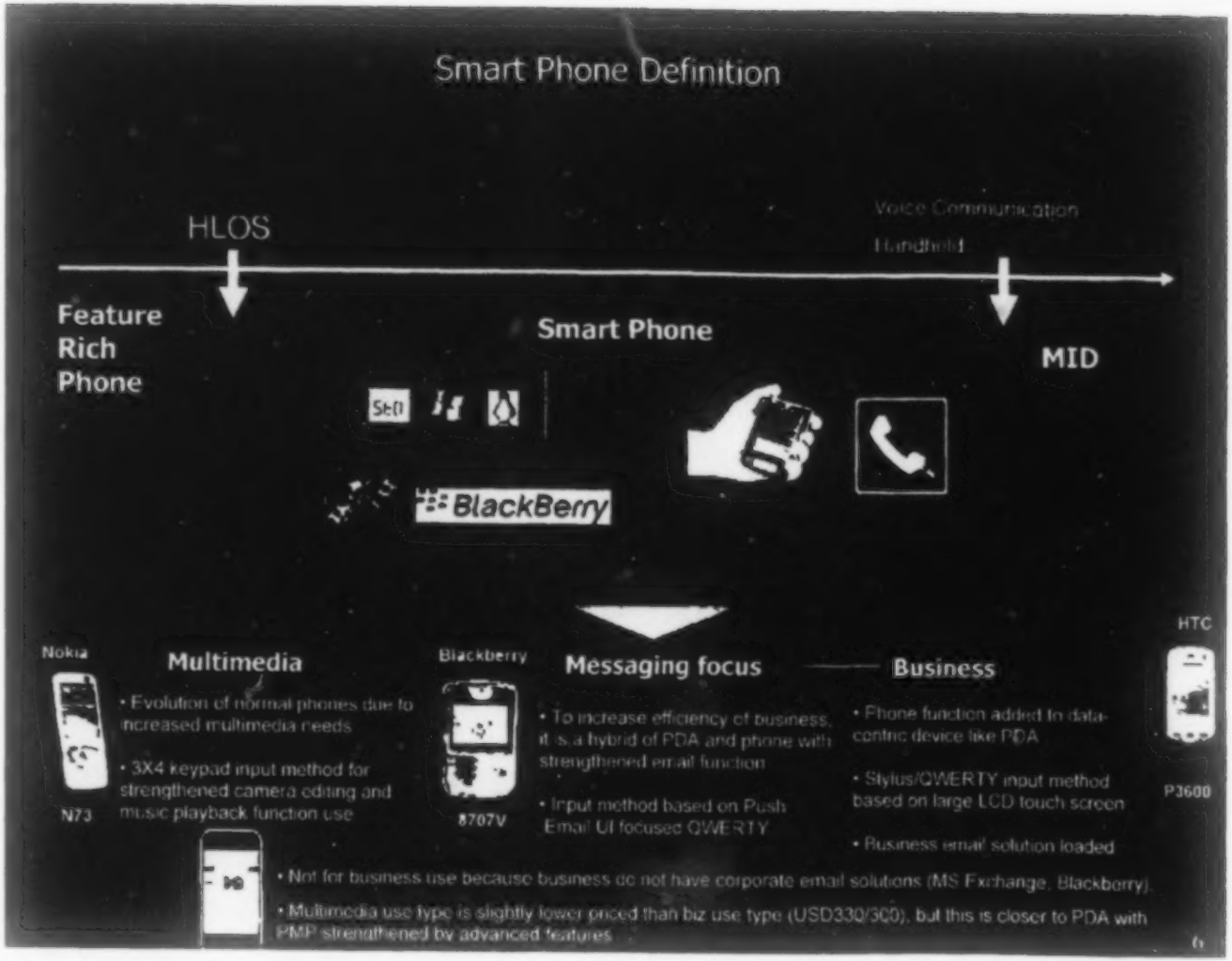
- Modem: Not a viable long-term strategy due to difficulty in finding stable slim modem partners
- AP: If further delayed, it will be difficult to secure self-sustenance (strength in functionality, niche market) of AP to counter other companies

5 **Advice: Develop total platform-One OS SW and One Chip HW in architectural[8] perspective**

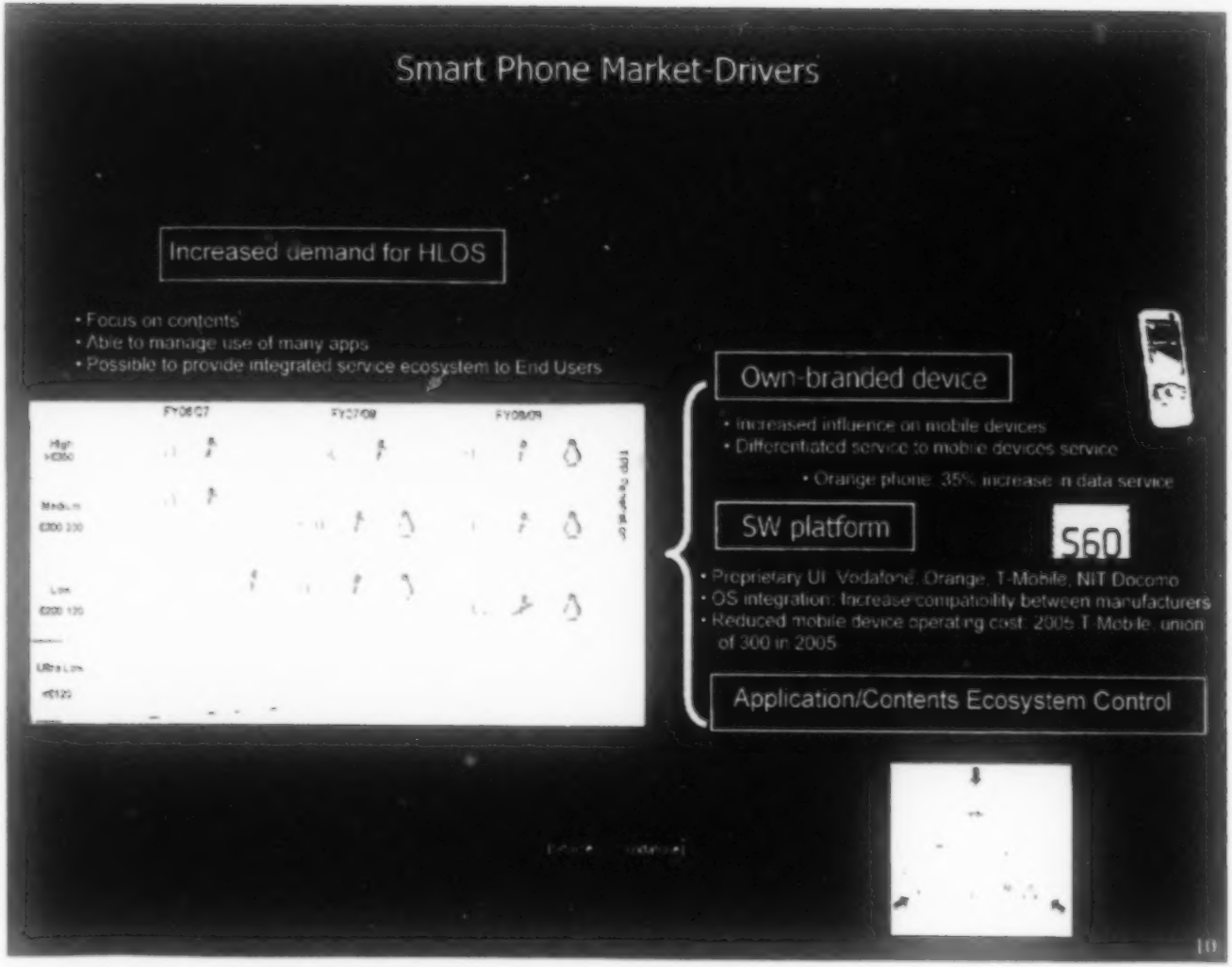
- In survival mode until our company provides one-chip → expand market influence top-down after securing one-chip
- Develop SW and HW after first defining in integrated perspective their functions and interface between them on the system

-High level OS, OS for general purpose computing environment, to support diverse System uses, possible to manage more complex resources than specialized OS – modem integrated AP – standalone AP + standalone modem -hardware accelerator, similar concept with MC – For SoC, only one OS is required and it deals with both the baseband and the application processor operations. – chip makers capable of providing one-chips – modem-only, no overhead caused by multimedia functionality defining components and interfaces between them on the system

Translation



Translation



Translation

iPhone Effect Analysis(2/3)

- iPod: Occupies 75% of the global MP3player market just 5 years after its release in 2001
  - This is difficult to explain with the concept of mania → It is because the service and product they provide satisfy the universal needs of the consumers
- Variables
  - Will consumers like iPhone? → We expect that they will, but no matter how much they like it, due to the limitations of their financial means, it will be difficult at the current price unless the lineup is diversified as in the case of the iPod
  - Alternative1: iPhone at the current price will be sold using the strategy of absorbing PMP user base into smartphone user base.
  - Alternative2: Will a low price iPhone (iPod + phone) come out and if so, will it appeal to consumers? → The prototype for low-price iPhone is speculated to be in the form of the iPod with phone function added to it, but considering the characteristics of the communication function, it has to assure input and output of text, so it is unclear whether this prototype would have appeal as a phone. However, it is expected that Apple will not betic expectations. Low-price iPhone may not be in the realm of smartphones (Whether or not OX X will be loaded)

Success Factors for the iPod

- Easy and intuitive UI that covers all user classes including male, female, old and young
- Beautiful design
- Diversified lineup that covers a wide range of prices
- Seamless integration of H/W, S/W and contents using iTunes
- Inexpensive and abundant contents at iTunes

Factors that Could Make iPhone a Success

- Easy and intuitive UI that covers all user classes including male, female, old and young
- Beautiful design
- Seamless integration of H/W, S/W and contents using iTunes
- Inexpensive and abundant contents at iTunes

+

- Equipment that is devoted to usability as a mobile device (phone, internet, PMP)
- OS X which is the most completed GUI operating system current in existence entering its 10th year
- Continuous device maintenance and supplement through SW upgrade using iTunes, etc
- Cooperative relationship with content creators built up through iTunes (sale of contents not a revenue model but to secure contents for selling Devices)

Factors for iPhone Failing

- Informal battery
- Current high price

38

PLAINTIFF'S EXHIBIT NO 36

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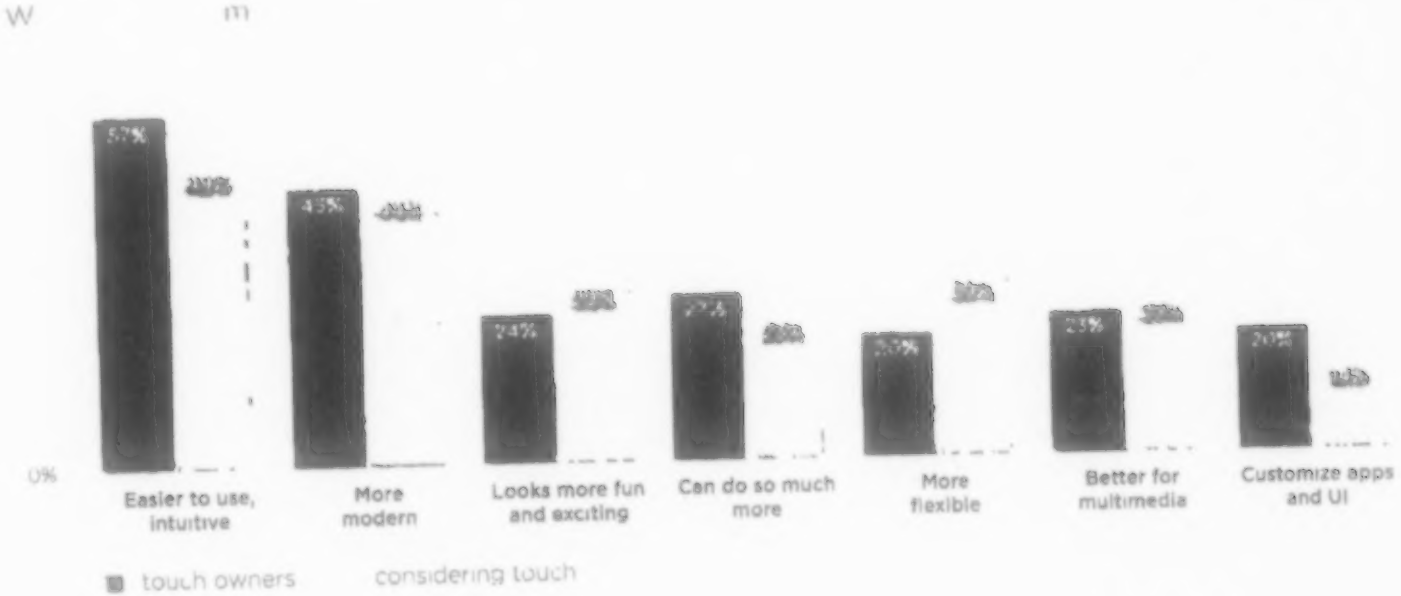
Ease of use is the major driver of their interest in touch



"Touch is more fun, you are living in your era, and it is modern."
Paris

"I think it's the way forward."
London

"It's a different sensation with touch. Moving things around on a screen is more usable, more intelligent."
Paris

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Why touch?

"With touch, I can
on my phone,
."

Controls and capabilities can be mapped to the needs of any content or application.

Versatile Power

Intuitive Control

I can navigate and use a range of new capabilities in a way that is faster and more intuitive than previous input methods.

SAMSDCA00191825

Pundits tell us that the iPhone is a revolution...

Apple Inc.'s iPhone has been the world's most influential smart phone since its debut a year ago, widely hailed for its beauty and functionality. It was a true hand-held computer that raised the bar for all its competitors.

Walter Mossberg, July 8, 2008
Wall Street Journal

Talk about hype. In the last six months, Apple's iPhone has been the subject of 11,000 print articles, and it turns up about 69 million hits on Google. Cultists are camping out in front of Apple stores; bloggers call it the "Jesus phone." As it turns out, much of the hype and some of the criticisms are justified. The iPhone is revolutionary.

Eric Pogue, June 27, 2007
NY times

Now, in the pursuit of an Apple-like contract, every manufacturer is racing to create a phone that consumers will love, instead of one that the carriers approve of.

Fred Vogelstein, 01.09.08
Wired

Much like the Western calendar marks time from before and after Jesus Christ, and how the computer world changed totally by the Macintosh - remembering that Windows is Microsoft's copy of the Mac operating system - I am certain that the mobile telecoms world will count its time in two Eras. The Era B' time Before the iPhone, and the ERA A' time After the iPhone

Tom Phaneuf, Mar 17, 2008
Communities Dominate Brands

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And so do iPhone users

"It's really weird that **a phone can change your life, but it really has**."
London

"I was playing with it and I thought it was really easy to use and I thought '**this could organize my life** if I get one of these.' And that is basically what I did."
London

"My iPhone is **the most important thing** in my life."
San Francisco

"I have an **emotional relationship** with it."
New York

"Oh, I adore it."
Chicago

Expressions of awe

"Apple was definitely **ahead of the game** with the iPhone. There was nothing out there like that at the time. I was first in line and I had to have it the day it came out."
Chicago

"This thing is **world-changing** in terms of phones."
San Francisco

"It's cool, it's extraordinary. I like the world of tomorrow you can enlarge pictures and move them around—it's **magic**."
Paris

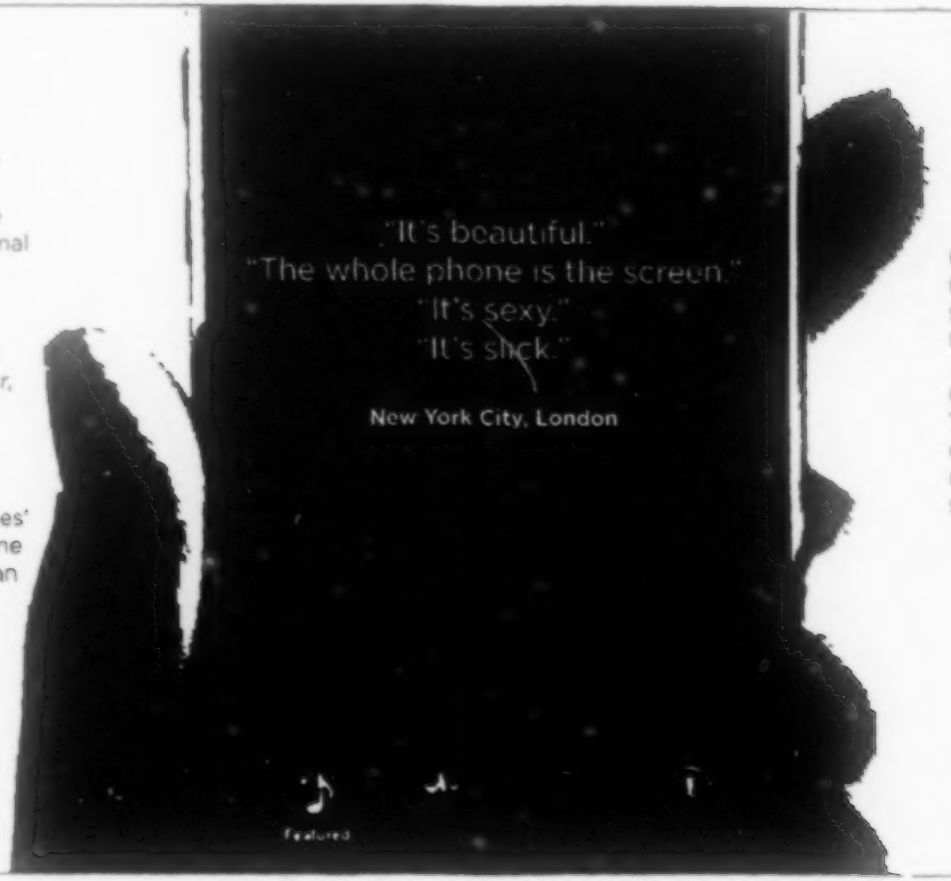
"I first saw my friend playing around with it and I had a go with it, it was like **magic**."
London

Screen-centric design has set the standard for touch

Dimensions of touch design
Touch design is more like TV design—minimal and screen-centric

Few buttons
The iPhone has four buttons home, power, volume, mute

Screen focused
The center screen mounted in the phones' form makes the iPhone look more TV-like than phone-like



Oversized screen
60% of the iPhone's surface is dedicated to the screen

Consistent surface
The surface plane is consistent, with no indentation for the screen

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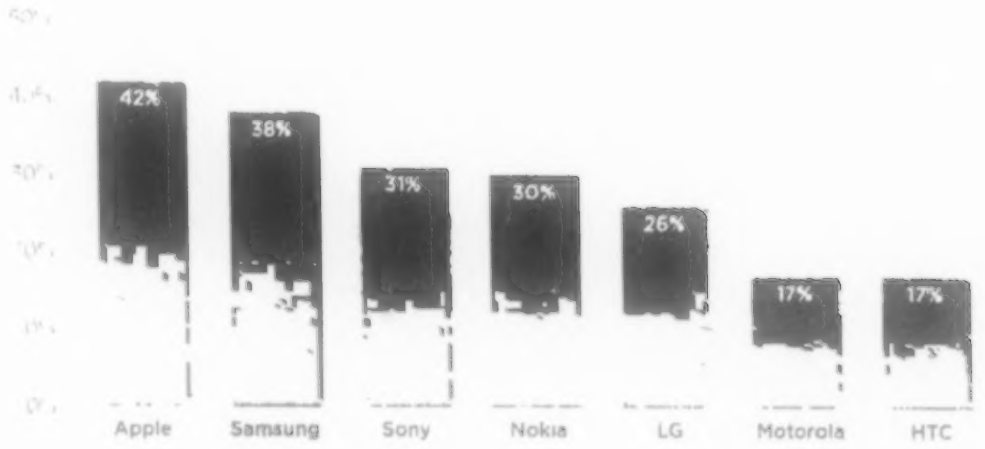
For State of the Art, Apple has overtaken Samsung as the most stylish brand overall



"I think Apple is so successful because they have come out with a unique product [and] you see all other mobile phone providers are trying to copy each other. Apple came out with something different and that's why everyone likes Apple—because it's different."
London

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The iPhone delivers the whole package, but it's not perfect

	PRODUCT LINEUP	DESIGN	USER INTERFACE	FUNCTIONALITY & APPLICATIONS
strengths	One product can serve surprisingly many segments	Sets the standard for screen-centric design Threatens Samsung style leadership amongst State of the Art consumers	Interface is clear and highly intuitive Interface is "sexy to use"	Software apps like maps, browser and image viewer are favorite functionality Large screen and memory enable fully robust multimedia experience
weaknesses		Size and lack of screen protection are consistent design concerns	Consistent frustration around input, especially typing, picture taking and text	Frustrations around imaging as well as limitations of what can be shared

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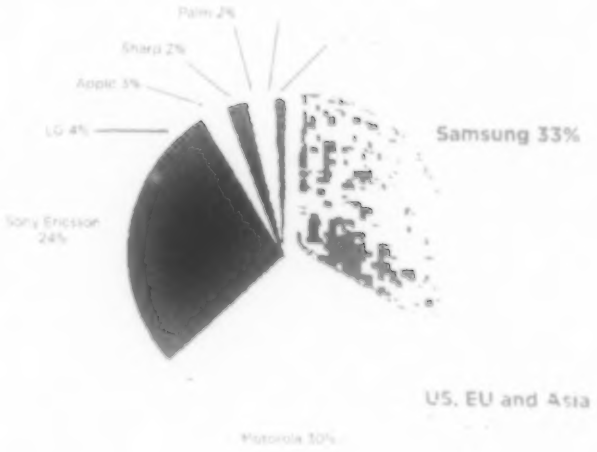
Samsung deserves credit for responding to the iPhone

Touch screen mobile phone market share by handset OEM



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Hybrid of TouchWiz and OS compounds IA confusion

Computer or phone?
Many, in an effort to impose an organizational system on the phone, interpret the Windows Mobile pages as "the computer homepage" and the TouchWiz home as the "phone homepage."

Why are there two paths?
However, even with this distinction, the user still has to learn how each is the entry, and two different ways to interact with the phone, which inevitably begs the question, "Why are there two ways?"

TouchWiz is easier
Given this, users orient to the TouchWiz homepage—the icons and the tasks they represent are very clear from this page.

> "This page looks like a startup screen on a computer [Windows OS]. This screen looks like a menu screen [Samsung 3x4 menu]. I'm not sure what the difference is between the two."
> **London**

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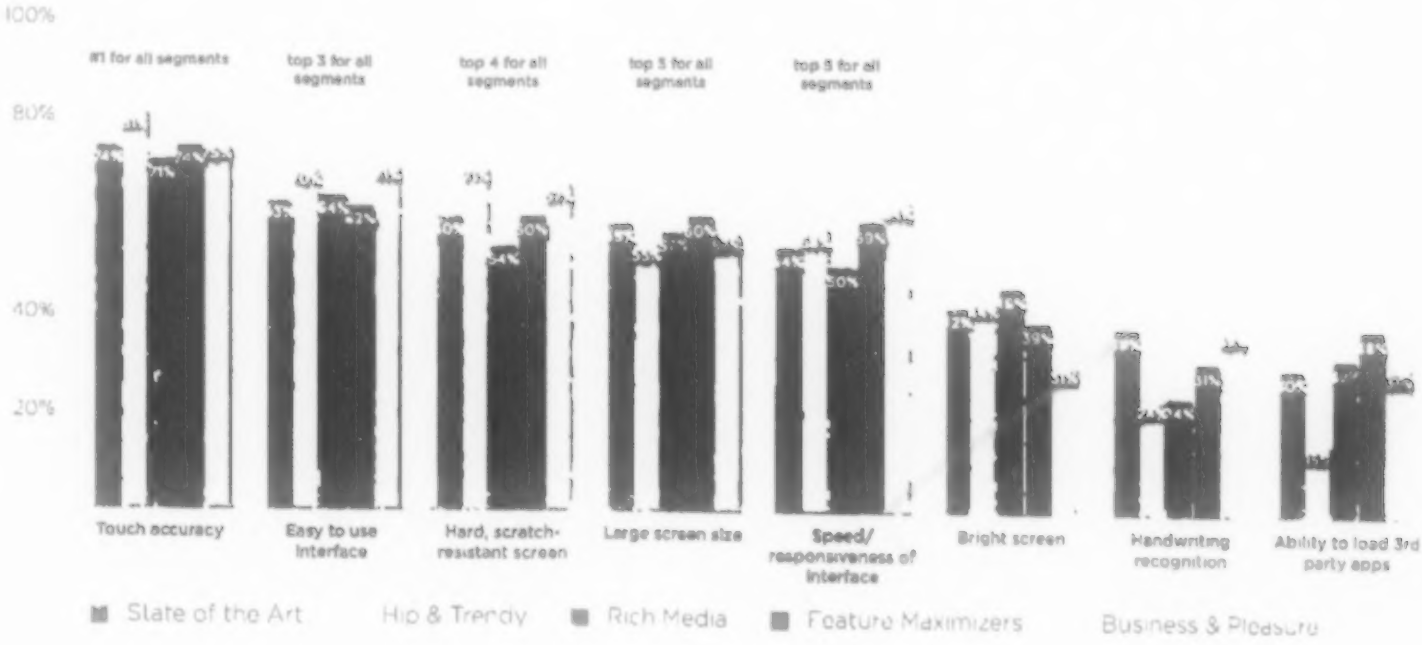
FEATURE SET & INTERFACE PREFERENCES

Users want an accurate, precise, easy to use interface



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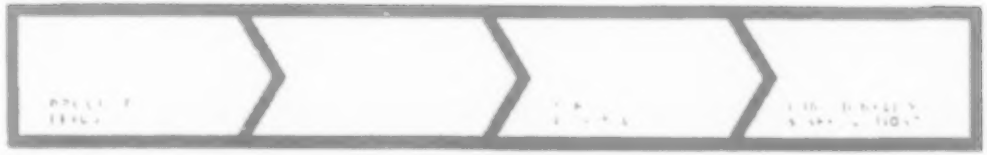
Key takeaways

CONSUMER SUMMARY



COMMON	Large screen, sufficient capabilities to do broad range of tasks Commonalities between Style/Music segments and Infotainment business segments	Screen-centric design language is key for "touch" One handed use is strong desire Clear concerns around durability and screen protection	Design/style of UX increasingly important An easy to use UI, that is accurate precise and responsive Consistent frustration with input	Want phones that are "mini-computers"-- including hardware, applications and the way they work together No strong preference for a software OS
SEGMENT DIFFERENCES	Emphasis on overall size, basic configuration and input method	Emphasis and importance of design and style by segment	Preferences for hard keys and importance of aesthetic	Weightings on utilitarian capabilities (email, web) versus media (camera, video)
IMPLICATIONS	A diverse hardware line up is needed to satisfy a broad range of consumer preferences.	Touch centric designs but with a willingness to create style diversity and choice	A highly responsive, compelling UI is critical to delivering promise of touch Addressing input deficiency is key user pain point	Functional superiority = specs + apps OS selection is less consumer driven then strategic

SAMNDCA00191928

Plaintiff's Exhibit No. 36 119

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Key takeaways

COMPETITOR SUMMARY

	Highly limited, one product currently, but great operation efficiency	Sets the standard for screen centric design	Easy to use, sexy to use UI is the lynch pin of iPhone's success	Hardware doesn't support full media capabilities, but applications and iTunes integration are excellent	Single platform focus drives operation efficiency	Drives ARPU/subs, but integrated system threatens carrier upside
NOKIA	Limited product line up highlights late entry to touch	Design is utilitarian and not stylish, but some clear synergy across phones	Symbian is solid, but still adapted from more traditional phone design	Improving hardware specs, and adding OVI integration into products	Single platform focus drives operational efficiency	OVI service ecosystem weakens carrier control
SAMSUNG	Wide range of products caters to clear distinctions in consumer form and input preference.	Diverse design, but no consistency across designs and nothing that makes a true statement.	UI basics lack intuitive consistency required to deliver on touch promise	Strong hardware support in many models undermined by lack of value-add in applications and service integration	Multiple platform strategy maximizes operational complexity	Seen as partner that will work with carriers
Implications	Lineup diversity is a clear competitive differentiator, but need platform efficiency	Opportunity to assert style leadership in touch through distinctive offerings with some synergies	Addressing UI improvement is an entry requirement for success in touch.	Critical to drive software/service value add to match competitors in touch environment.	Reduced platforms drive efficiency and optimized experience	Develop business model & app strategy that includes carriers

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PLAINTIFF'S EXHIBIT NO. 40

TRANSLATION

Email from Bong-Hee Kim <mikikim@samsung com>

Date. Wednesday, 2/11/2010 Thursday (23 30)

Title. Fwd. Fwd. Fwd· Summary of Executive-Level Meeting Supervised by Head of Division (February 10).

For your reference

------Original Message------

Sender Eun-Jung Ko <koej@samsung.com> D5(Lead)/ Lead/UX Cluster Part (Mobile)/Samsung Electronics

Date 2010-02-11 16.17 (GMT+09 00)

Title· Fwd Fwd Summary of Executive-Level Meeting Supervised by Head of Division (February 10)

Mobile Communications Division, Samsung Mobile Design Team, UX Design
Eun Jung Ko (Lead)
*Address· Seocho Tower, 12th Floor, Seocho 2-Dong, Seocho-gu, Seoul, Korea
*Tel 02-2255-5401
*Anycall [mobile]· 016-787-2986
*Fax 02-2255-5499
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------Original Message------

Sender Eun Jung Ko<koej@samsung com> D5(Lead)/ Lead/UX Cluster Part (Mobile)/Samsung Electronics

Date 2010-02-10 15.42 (GMT+09 00)

Title Fwd Summary of Executive-Level Meeting Supervised by Head of Division (February 10)

I attended the meeting described below There are a few corrections and missing items

- Strive to realize UX that is easy to use regardless of age, occupation, and education, UX that is not like UX, UX that flows like water as its alarm goes off when you wake in the morning, then has the news coming out of it as you get ready to leave for work

=> To this the Senior Vice President said, That's what we're doing, to which Head of Division said, "No, I'm not saying do that for everything,

I'm saying I like it this way, but others may have UXs that they like based on their individuality So, we should be able to accommodate that UX that's not called UX and not like UX I don't mean UX needs to disappear, it's something that is a matter of course, so even if we don't call it UX, if we use it it's as a matter of course "

I wrote it all down without leaving out a single grammatical particle out I get the gist of it but it's convoluted Argh ㅠㅠ

- Screens are our most important asset It is very important that we increase the size of our screen

=> To explain this point more concretely, he talked about the TVs that are in homes as an example Before, everyone used small TVs but nowadays, every house has a large TV Everyone wants to look at a big screen It is the same for mobile phones Once you've come across a touch phone, you desire to view the contents in a larger screen

- A judge speaks through judgments, an engineer speaks through products, and a designer should not need to speak

=> There is a saying that "Judges speak through their judgments " Have you heard that? (Nobody answers) You haven't heard that? Engineers don't need to say, "I implemented this however which way" and don't need to talk about this problem or that They show, with the very product they have developed.

The same goes for designers Whatever else can be said about design language, there is no need for explanations Does not President Choi demand to see the mockup first, before he listens to any explanations?

Designers, for your part, do not speak, show your properly executed design

- I absolutely never demand anything unreasonable of you I never make you do anything that is difficult And I speak in simple terms I never talk in a vague and ambiguous manner, I speak in precise terms Recognize that

- The most important aspect of a design is its level of perfection I hope that you do your best to increase the level of perfection until you have achieved higher quality

- A company goes out of business because of its own success factors Samsung's success factors are diligence, sincerity, and acting in an exemplary manner The kind that says yes to whatever a carrier wants

That's a shortcut to going out of business All the carriers tell me, Hey JK! Your phones have great technological prowess and everything's great But it's hard to sell them as high-end phones

That's because we spent all of our subsidy funds on the iPhone and can't give a penny in subsidy to your phones, so of course your phones will be expensive and then it follows that they won't sell

I hear things like this Let's make something like the iPhone

- When everybody (both consumers and the industry) talk about UX, they weigh it against the iPhone The iPhone has become the standard That's how things are already

Do you know how difficult the Omnia is to use? When you compare the 2007 version of the iPhone with our current Omnia, can you honestly say the Omnia is better? If you compare the UX with the iPhone, it's a difference between Heaven and Earth

- If a shabby UX gets proposed, we put together a task force with Senior Vice President Young Hwan Kim as its leader to stop development Now we're making a process by which if that kind of UX gets proposed, it'll get stopped and Improvements can be made

- He called out the names of the leaders of each section Where is Principal Sung-Sik Lee? (Senior Vice President Jang He went to Suwon) Is he living in Suwon? (Yes, still living there, he took everyone with him and is living there with about forty people) He's suffering, right? I know you guys are suffering Have things gotten much better? (Yes, it's getting better) Good, good, they should Let's muster up more strength

You are the experts I'm not a designer, as you know But in my opinion there are so many designs that depart from common sense Sometimes I've thought I'm looking at a college graduation project I've never

said so because I didn't want to discourage you, but since you're the heads of your sections so I'm saying it I look at things from the perspective of consumers, so I fix things that don't make sense It would be nice if I could look at everything but I can't, so you'll have to do it well yourselves

- For goodness sake let's get things done while working within the realm of common sense When it comes to UX, fix things that make sense first I've always said this, haven't I? A UX that can be used by anyone from six year olds to senior citizens Ease of use is the answer

- I live in Bundang and it only takes me 30 minutes to get here I'll come by here from time to time early in the morning or in the evening for discussions like this Don't you go on business trips, stay here and improve quality Don't even go to MWC Why do we need to go see the Chinese products that are there because no one else shows up? None of you should go

- *** To product designers, he said, you must make three or four design languages a year and put them to good use! The look and feel of a product matters most

To UX designers, he said, you must increase the level of perfection, make products within the realm of common sense and based on ease of use

To everyone, he said you must think at least six months ahead, we must get to where related departments come here for answers

---

Mobile Communications Division, Samsung
Mobile Design Team, UX Design
Eun-Jung Ko (Lead)

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------Original message------

Sender Hye-Sun Kim<sunnykim72@samsung com>. Manager of G5, Wireless Communication Design Group, Samsung

Date 2/10/2010 14 00 (GMT +9 00)

Title Summary of Executive-Level Meeting Supervised by Head of Division (February 10)

‹ Mobile Communications Division Meeting ›

- Time 2010 2 10 (Wednesday) 9 40 ~ 11 00 (1h 20m)
- Place 10F Gold Conference Room, Seocho Worksite
- Attendees Donghoon Chang (Senior Vice President), Chang-Hwan Hwang (Vice President), Min-Hyuk Lee (Principal), Hyeong-seok Jeon (Principal), Soo-Jung Yoon (Principal), Sang-Min Hyun (Principal), YuiSoo Kum (Principal), Yoon-Jung Lee (Principal), Byoung-Chul Hwang (Principal), Nammi Kim (Principal), Jin-Soo Kim (Lead), Eun-Jung Ko (Lead), Ki-Hwan Kwon (Lead), Ji-Yeon Lee (Lead), Jung-Mi Ha (Lead), Dongseok Ryu (Lead), Beom Gu Han (Lead), Sun-Young Lee (Lead), Doo-Rae Kim (Lead), Yin-Gon Park (Lead), Hyun-Sup Kim (Lead), Ja-young Kim (Lead), Hyeon-seop Kim (Lead), Byoung-Joo Kim (Lead), Hee-Woong Choi (Lead), Hye-Sun Kim (Manager) total 28

■ Summary of the Comments of the Head of the Division

- [Our] quality isn't good, perhaps because the designers are chased along by our schedule as they get so many models done Don't you say "not quite" about something that is lacking in completeness and would be an embarrassment to show others? It would be better to not make anything at all than to make it not quite By introducing a product that is not quite, all you do is make things hard for the consumers In all the work you do, do it with the mindset that once it leaves your hands it's final, do your best final product with a high level of completion, having checked and improved it's a final product with a high level of perfection, having checked and improved on it meticulously and in detail numerous times over

Designers rightly should be respected and recognized within [their] organization, and in society outside the organization Work with self-confidence, but there needs to be change in the methods by which you work

I'll be tied up with various strategy meetings and overseas business trips until March but after March it is my intention to set each and every thing right around here It seems like there's an unnecessary increasing of the number of products at product planning The path to improving Quality is to eliminate inefficient models and reduce the number of models overall

Right now we're expecting to do around 350 models the first half of this year If you ask the companies, the Operators we deal with, whether they like that we launch one model right after the another, [the answer is] absolutely not Quantity isn't what's important,

what's important is putting on the market models with a high level of perfection, one to two Excellent ones

We are at the point where we can proudly say we're worthy of being No 2 in the Telecom Industry, and since we are in a position where we are Leading the Industry, what is most important is that we select one Design Language based on "creativity" befitting our status, and apply maximum variation to that one Design Language

Minimize the time Senior Vice President Donghoon Chang and the rest of the designers spend going back and forth from Suwon and the time spent away from Seocho on things like overseas business trips and try to spend long periods of time with subordinates putting your heads together to come up with the best final products

I don't know how many of you are getting ready to go to MWC, but not only are Nokia and many other companies saying they're not going to participate, there's also nothing to see, so don't go

See to it that should anyone come to Seocho, that person gets the feeling that there's something metaphysical, mysterious, and secretive. and see to it that you do not show non-final designs that are in an intermediate stage to this person and that person, and then gather various comments and make corresponding modifications

Designers rightly must make their own designs with conviction and confidence, do not strive to do designs to please me (the president), instead make designs with faces that are creative and diverse

I have confidence in our products' H/W, in their exterior design, and in their quality But when it

comes to the ease of use of our UX, I lack such confidence

Influential figures outside the company come across the iPhone, and they point out that "Samsung is dozing off"

All this time we've been paying all our attention to Nokia, and concentrated our efforts on things like Folder, Bar, Slide, yet when our UX is compared to the unexpected competitor Apple's iPhone, the difference is truly that of Heaven and Earth

It's a crisis of design

The world is changing, and the flow of change isn't something that you can have come back again by going against the flow

Metamorphosis requires energy, we have ample assets in the form of our people, so as long as we are equipped with capability, the world's change will function for us as an advantageous opportunity

All the executives and employees in the Mobile Communications Division are diligent and exemplary that all this time, when Operators made comments about the designs we put before them, we modified and modified again, without missing a single comment That style of business has worked until now, but the iPhone's emergence means the time we have to change our methods has arrived

In regards to exteriors, do your best not to create a plastic feeling and instead create a Metallic feel

As for UX, see to it that it is a UX that is easy to use regardless of age, occupation, and level of education, that it's a UX that's not like a UX, that, just like the flow of water, its alarm rings when you wake in the morning then out comes the news while you're getting

ready to leave for work, see to it that you're able to come up with that kind of UX

Our most important asset is our Screen

It is very important that we make Screen Size bigger, and in the future mobile phones will absorb even the Function of e-books

The concern about being too far ahead is that it can also mean failure, so our designers need to think at least six months ahead, they need enough prior preparation to resolve whatever sales or product planning says about their designs

From now on I'll come to Seocho more often and we will put our heads together

If you have something to report, don't come to Suwon bearing a bag of mockups, just call me anytime

A judge speaks through judgments, an engineer speaks through products, and a designer should not need to speak

That is all

Hyesun Kim (Sunny)

HR Manager

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Mobile Communications Division

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Certificate of Translation

February 6, 2012

I hereby certify that this Korean to English translation of SAMNDCA10247373 to SAMNDCA 10247378 Is an accurate and complete rendering of the contents of the source document to the best of my knowledge, except for the word "TRANSLATION" at the upper right corner of each translated page I further certify that I translated said document and that I am a competent in both languages with twenty years of professional Korean to English translation experience

By /s/ Peter Mauro Schroepfer

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PLAINTIFF'S EXHIBIT NO 44

Foundation

Relative Evaluation Report on S1, IPhone

March 2 2010

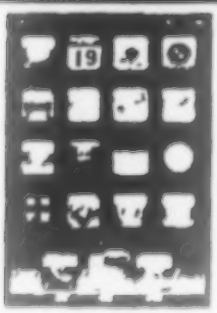
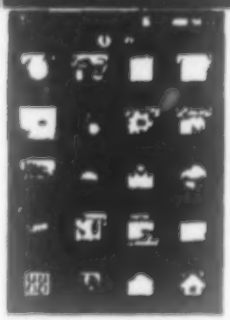
Product Engineering Team
SW Verification Group

Plaintiff's Exhibit No 44 43

Foundation

38. Basic Function _ Calendar

- **The date on the Calendar Icon doesn't change, causing confusion for the users**
  - **i-Phone: Day of the week/date on the Calendar icon is updated daily based on the current date**
  - **S1: The date is fixed on December 7 because it is a Graphic icon**

i-Phone	S1
	
Day of the week/date displayed on the Calendar icon is updated daily based on the current date	**Day of the week/date displayed on the Calendar icon is fixed on December 7**

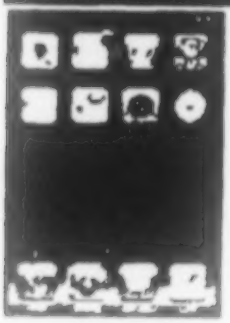
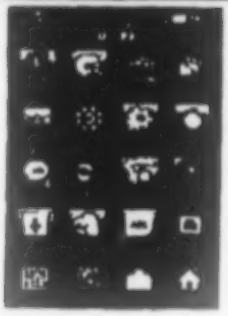
The date displayed on the Calendar Icon should match the current date on the phone

Developers for Improvement

Plaintiff's Exhibit No 44.51

46. Basic Function _ Home Menu

- Legibility of the menu page Index icon is low
  - i-Phone: It is easy to recognize the current page because the current page icon color is different
  - SI Legibility of the current page number is low because page index is in identical color

i-Phone	SI
	
It is easy to recognize the location of the current page because the color of the icon indicating the current page is different from other page icons.	1. The color of the page Index is the same in white, so it's difficult to recognize the current page 2. It is unnecessary to indicate page numbers

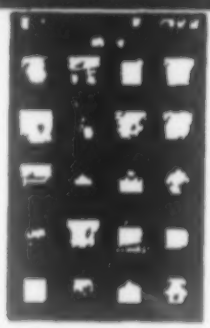
Directions for Improvement: Need to change the color of the Index Icon so the current page is the same in distinguishable and need to remember the concept of not displaying the page number

31 / 112

Plaintiff's Exhibit No 44.122

117. Visual Interaction Effect _ Icon

- Poor color arrangement of rectangular frames on the homescreen that form the backgrounds for icons
  - i-Phone: Icons on home screen have high intuitiveness because a background is used only when necessary
  - SI: Many instances where icons have similar background colors even though they do not have similar functions

i-Phone	GT-I9000 SET
	
Provides ease of use to users by applying background only when necessary and using Icons that Intuitively represent their functionalities	In many instances unrelated functions have similar background colors, failing to provide uniformity and often causing confusion as to even their functions Feels awkward since all Icons have frames on the background

Directions for Improvement: Either change the colors of bordering rectangular frames according to a consistent pattern for a uniform feel, or remove the rectangular frames and use the Icons only for a clean and uniform feel

Plaintiff's Exhibit No 44 127

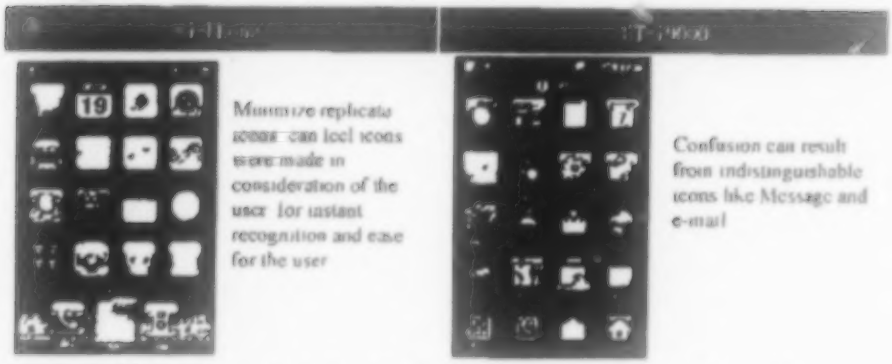
Translation

Confidential

122. Visual Interaction Effect _ Icon

❑ Usage of indistinguishable icons for different functions makes for difficult differentiation

- i-Phone: Instant recognizability due to highly intuitive icon usage
- SI: Difficult differentiation due to icons that are duplicative or are intuitively deficient



Plaintiff's Exhibit No 44 131

Translation

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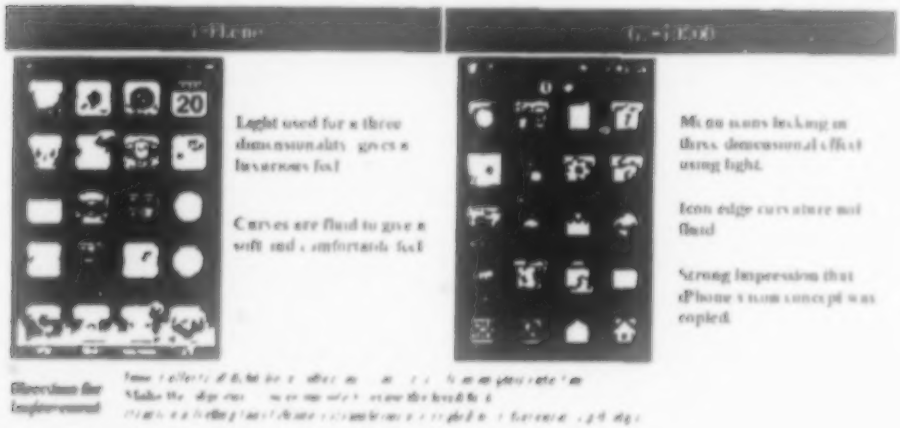
126. Visual Interaction Effect _ Icon

❑ Graphical UI of the menu icons are monotonous

- i-Phone: It maximizes a 3 dimensional effect utilizing light and the curve of icon frames is smooth
- SI: There is no feeling of receiving light and delicate feeling of softness in the curvatures of icon corners



PLAINTIFF'S EXHIBIT NO 52

Samsung's Use of Apple Patents in Smartphones

Key issues

- Samsung is a key Apple partner
- The Android software platform makes extensive use of Apple intellectual property without Apple's permission
  - Android is designed to lead companies to imitate the iPhone product design and strategy
- Samsung's choice to use Android without a license undermines Samsung's greater relationship with Apple

Apple Patents

- Large worldwide patent portfolio on computing technology
  - Over 3500 US patents
  - Worldwide coverage for many key patents
- Tracks Apple's 35 years of leadership in personal and mobile computing and communications
- Definitive patent portfolio for industry –
  - Modern computing and consumer electronics hardware
  - Internet architecture and services
  - Modern software - OS, applications, and user interface

Apple Patents General Computing

- Apple patents broadly cover general computing technologies used in all modern computing devices and consumer electronics
  - Core processor technologies
  - High speed internal buses and peripheral device buses
  - Graphics processors
  - Networking and communications
  - Power management
  - Mechanical and input technologies

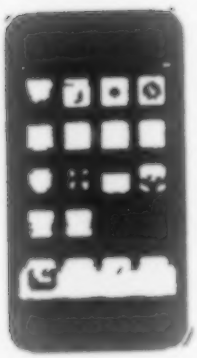
Apple Patents Internet architecture and services

- Apple patents are essential to modern Internet-enabled devices and services
  - Dynamic web page generation
  - Persistent objects in a web page
  - Object/ relational database mapping
  - Location based services
  - Mobile computer IP address assignment
  - Media and application store services
  - Multimedia format and delivery

Apple Patents Software

- Apple has definitive patents on modern operating systems and applications architecture
  - Operating systems and basic software architecture
  - Graphics
  - User Interface
  - Multimedia processing
  - Networking and communication
  - Object oriented software
  - Development technologies

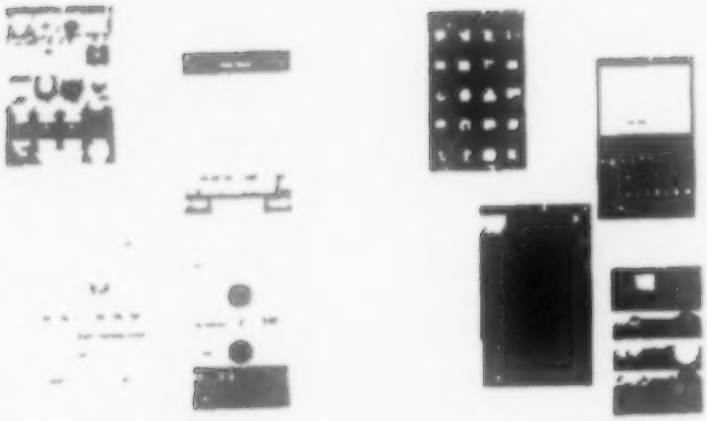
Samsung Copying iPhone



Apple iPhone 4

Samsung Galaxy S

Samsung Copying iPhone



Android Phones

2011 Wireless Smartphone Satisfaction Study℠

Management Report

March 2011

Telecommunications Department

EXHIBIT 594
Danner
2-22-12 JN

PLAINTIFF'S EXHIBIT NO. 69

Executive Summary

- ✓ Among owners who may purchase a new smartphone within the next 6 months, 33% consider themselves likely to purchase an iPhone model, and an additional 27% will likely purchase an HTC model. An additional 10% of shoppers indicate they are likely to purchase a Samsung or Motorola model, while 7% say they likely will choose a BlackBerry model.
- ✓ Nearly half (45%) of smartphone owners indicate they chose their model because they liked its overall design and style and 43% chose their device because it featured a touch screen for easy navigation. Simple operation is important, as 36% of owners report having chosen their handset because it is "generally easy to use."

About one-third of smartphone owners indicate a propensity to purchase a new phone within the next 6 months. Palm and RIM BlackBerry owners have the highest likelihood of buying a new handset in the near future and therefore represent a target market for acquisition (46% and 44%, respectively). The majority of smartphone owners indicate a likelihood to repurchase their current brand—18% say they "definitely will" and 46% say they "probably will" repurchase from their current handset manufacturer. More than one-third (37%) of Apple owners say they "definitely will" repurchase the same brand, compared to just 5% of Nokia owners. It is worth noting, however, that Apple owners are currently less likely to indicate they "definitely will" repurchase than they were 6 months ago (37% vs. 41%, respectively).

Usage and spending levels are much higher among smartphone owners than among traditional mobile phone users. Smartphone owners report using 622 minutes per month, on average. HTC smartphone owners in particular report using 707 minutes per month. Increased costs are associated with high usage levels such as this. The average monthly expenditure for smartphone wireless service is $107, an increase of $7 from 2010 Vol. 2. Motorola owners spend $8 more per month than industry average ($115 vs. $107).

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Features Desired on Future Smartphone[1]

Features Desired on Future Smartphone	2011 Vol
Memory expansion	19%
Push-to-talk	18%
Touch screen	16%
Voice recognition/command/dialing	11%
Mobile radio capability	11%
Photo speed dial	10%
International roaming capabilities	10%
Global Positioning System (GPS)	10%
Downloadable programs	9%
Wi-Fi capabilities	9%
Capture/Record video with device	9%
QWERTY Keyboard	9%
Stream music/video	7%
View and pay bills from phone	6%
Games	6%
Download/View video clips	5%
MMS/Picture messaging	5%
Listen to music/MP3 player	5%
Download MP3/music files	5%
Ability to send and receive e-mail on multiple accounts	5%
Integrated application store	5%

[1] Responses less than 5% not shown

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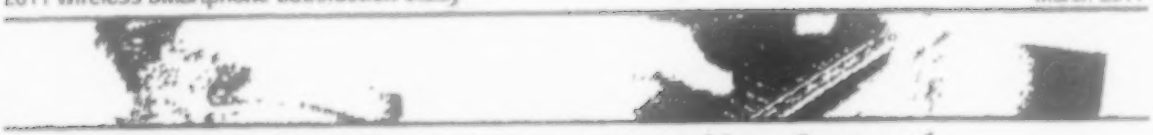
437
Plaintiff's Exhibit No. 69 30



Features Desired By Current Smartphone Manufacturer[1]

Features Desired on Future Handset	Apple	HTC	Motorola	Nokia	Palm	RIM/ BlackBerry	Samsung	Industry Average
Memory expansion	37%	7%	11%	7%	26%	7%	6%	19%
Push-to-talk	16%	20%	32%	7%	15%	12%	17%	16%
Touch screen	1%	4%	5%	21%	1%	42%	10%	16%
Voice recognition/command/dialing	15%	6%	6%	9%	33%	5%	12%	11%
Mobile radio capability	9%	11%	11%	12%	14%	11%	11%	11%
Photo speed dial	11%	10%	11%	9%	13%	8%	13%	10%
International roaming capabilities	7%	16%	21%	6%	12%	8%	12%	10%
Global Positioning System (GPS)	7%	6%	3%	9%	18%	13%	13%	10%
Downloadable programs	14%	9%	10%	8%	6%	6%	6%	9%
Wi-Fi capabilities	2%	4%	6%	12%	20%	18%	13%	9%
Capture/Record video with device	19%	2%	3%	3%	3%	5%	4%	9%
QWERTY Keyboard	8%	21%	7%	10%	4%	6%	10%	8%
Stream music/video	5%	7%	4%	9%	5%	8%	7%	7%
View and pay bills from phone	3%	7%	5%	2%	12%	8%	10%	6%
Games	4%	8%	14%	4%	10%	3%	6%	6%
Download/View video clips	2%	4%	2%	6%	6%	9%	6%	5%
MMS/Picture messaging	6%	4%	4%	7%	4%	5%	5%	5%
Listen to music/MP3 player	1%	3%	2%	12%	11%	8%	9%	5%
Download MP3/music files	3%	5%	2%	7%	5%	6%	9%	5%
Ability to send and receive e-mail on multiple accounts	4%	5%	3%	7%	7%	5%	5%	5%
Integrated application store	2%	8%	1%	4%	9%	4%	11%	5%

[1] Responses less than 5% for the industry average not shown

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Question Topics Used to Determine Factors

Ease of Operation (26%)

- Quality of sound when on a call (16%)
- Ease of pressing/activating keypad/keyboard buttons (15%)
- Ease of navigating phone using touch screen, toggle/navigation wheel (15%)
- Ability to adjust volume to suit needs (14%)
- Ease of navigating around phone menu system (14%)
- Ease of using basic calling features (13%)
- Ease of using text messaging (13%)

Operating System (24%)

- Reliability/stability of smartphone operating system (33%)
- Speed of mobile Internet (20%)
- Amount of time it takes to move between applications (19%)
- Timeliness of syncing (16%)
- Amount of time it takes to attach/transfer files (12%)

Physical Design (23%)

- Visual appeal of your wireless phone (22%)
- Size of display screen (20%)
- Brightness of background display screen lighting (20%)
- Weight of wireless phone (including battery) (19%)
- Size of wireless phone (19%)

Features (19%)

- Usefulness of applications available on phone (26%)
- Ability to download additional applications (21%)
- Availability of multimedia functions (20%)
- Quality of camera pictures and videos (17%)
- Variety of ring tones supported (16%)

[redacted]

[redacted]

- Amount of battery life before it needs recharging (53%)
- Length of time needed to recharge battery (28%)
- Ease of replacing batteries (19%)

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Purchasing Selection Process

Main reasons for choosing the smartphone manufacturer include *Liked overall design or style* (45%), *Internet capability* (44%), and *Touch screen* (43%). The reasons for selecting a particular smartphone brand differ from the reasons for selecting a traditional handset, as smartphone users are less likely to select their handset for price-related reasons. The reasons for selecting a smartphone manufacturer frequently pertain to an available communication feature or technology. For example, 36% selected their manufacturer because of its ability to use e-mail accounts. Another common trend among smartphone users is selecting their phones based on the ease of operating said features and technologies. An additional 36% of smartphone users select their phones because the smartphone is *Generally easy to use*, 35% select their phones for *Wi-Fi capabilities*, and 35% reported that their selection was based on the *Quality of the phone*.

Satisfaction with the handset is highest when it is chosen for reasons pertaining to quality. Those having chosen their smartphone for these reasons rate their model a score of 804, while those that indicate their model was selected as a result of the price rate their device a score of 749.

The correlation between satisfaction and repurchase rates still remains the same evidenced by Apple owners indicating they "Definitely will" repurchase their current brand at a rate of 37% compared with 18% for the industry average. Just 2% of Apple users indicate they "Definitely will not" repurchase their current brand of smartphone. HTC owners indicate that they "Probably will" repurchase at a rate of 53%; however, these users are not as likely to fully commit and say they "Definitely will" repurchase. This implies there is a certain level of loyalty, although HTC owners will consider their options when it is time for them to purchase a new handset.

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Selection Process Among Smartphone Manufacturers[1,2]

Reasons for Selecting Handset	Industry Avg	Apple	HTC	Motorola	Nokia	Palm	RIM BlackBerry	Samsung
Liked overall design/style	45%	51%	49%	50%	34%	42%	38%	43%
Internet capable	44%	48%	51%	57%	18%	37%	37%	39%
Touch screen	43%	58%	61%	58%	16%	56%	11%	52%
Ability to use e-mail accounts	36%	40%	39%	50%	14%	28%	33%	28%
Generally easy to use	36%	45%	32%	35%	26%	33%	31%	30%
Wi-Fi capabilities	35%	50%	42%	43%	13%	27%	18%	25%
Quality of phone/best one	35%	49%	36%	33%	23%	18%	25%	23%
Quality of display screen	34%	41%	40%	45%	17%	28%	22%	32%
Digital camera feature	33%	34%	37%	44%	27%	32%	25%	34%
GPS/Location feature	32%	40%	40%	50%	16%	25%	19%	27%
Ease of using Internet features	32%	44%	33%	40%	11%	26%	21%	21%
Ease of using e-mail features	31%	40%	27%	38%	10%	24%	28%	20%

[1] Reasons less than 31% not shown
[2] Based to all lengths of handset ownership

Selection Process Among Tenured < 12 Months[1]

	Industry Avg	Apple	HTC	Motorola	Nokia	Palm	RIM BlackBerry	Samsung
Liked overall design/style	47%	51%	50%	50%	36%	49%	38%	43%
Touch screen	46%	56%	62%	59%	26%	54%	8%	54%
Internet capable	44%	44%	52%	56%	23%	44%	34%	43%
Wi-Fi capabilities	38%	48%	44%	44%	13%	38%	24%	32%
Quality of display screen	37%	43%	43%	46%	18%	35%	22%	38%
Ability to use e-mail accounts	36%	36%	39%	50%	16%	37%	31%	32%
Generally easy to use	36%	44%	32%	35%	29%	33%	31%	34%
Quality of phone/best one	35%	49%	30%	32%	15%	17%	26%	30%
Digital camera feature	35%	35%	40%	44%	26%	39%	26%	36%
GPS/Location feature	35%	38%	43%	50%	21%	32%	19%	31%
Ease of using Internet features	32%	40%	34%	40%	13%	34%	23%	26%
Latest technology	31%	39%	38%	40%	10%	27%	14%	28%
Ease of using e-mail features	31%	37%	30%	39%	7%	29%	26%	25%
Plays music/MP3 files	31%	38%	31%	34%	10%	28%	19%	32%

[1] Reasons less than 36% not shown

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The New York Times
nytimes com

January 11, 2007

STATE OF THE ART

Apple Waves Its Wand at the Phone

By DAVID POGUE

SAN FRANCISCO

Remember the fairy godmother in "Cinderella"? She'd wave her wand and turn some homely and utilitarian object, like a pumpkin or a mouse, into something glamorous and amazing, like a carriage or fully accessorized coachman

Evidently, she lives in some back room at Apple

Every time Steve Jobs spies some hopelessly ugly, complex machine that cries out for the Apple touch—computers, say, or music players—he lets her out

At the annual Macworld Expo in San Francisco, Mr Jobs demonstrated the latest result of godmother wand-waving He granted the wishes of millions of Apple followers and rumormongers by turning the ordinary cellphone into the iPhone

At the moment, the iPhone is in an advanced prototype stage, which I was allowed to play with for only an hour, the finished product won't be available in the United States until June, or in Europe until the fourth quarter So this column is a preview, not a review

Already, though, one thing is clear the name iPhone may be doing Apple a disservice This machine is so packed with possibilities that the cellphone may actually be the least interesting part

As Mr Jobs pointed out in his keynote presentation, the iPhone is at least three products merged into one a phone, a wide-screen iPod and a wireless, touch-screen Internet communicator. That helps to explain its price $499 or $599 (with four or eight gigabytes of storage)

As you'd expect of Apple, the iPhone is gorgeous Its face is shiny black, rimmed by mirror-finish stainless steel The back is textured aluminum, interrupted only by the lens of a twomegapixel camera and a mirrored Apple logo The phone is slightly taller and wider than a Palm Treo, but much thinner (4 5 by 2 4 by 0 46 inches)

You won't complain about too many buttons on this phone, it comes very close to having none at all The front is dominated by a touch screen (320 by 480 pixels) operated by finger alone The only physical buttons, in fact, are volume up/down, ringer on/off (hurrah!), sleep/wake and, beneath the screen, a Home button

The iPhone's beauty alone would be enough to prompt certain members of the iPod cult to dig for their credit cards But its Mac OS X-based software makes it not so much a smartphone as something out of "Minority Report "

Take the iPod features, for example As on any iPod, scrolling through lists of songs and albums is a blast—but there's no scroll wheel Instead, you flick your finger on the glass to send the list scrolling freely, according to the speed of your flick The scrolling spins

slowly to a stop, as though by its own inertia The effect is both spectacular and practical, because as the scrolling slows, you can see where you are before flicking again if necessary

The same flicking lets you flip through photos or album covers as though they're on a 3-D rack All of this—photos, music collection, address book, podcasts. videos and so on—are synched to the iPhone from Apple's iTunes software running on a Mac or Windows PC, courtesy of the charging/synching dock that is included

Movies are especially satisfying on this iPod That's partly because of the wide-screen orientation, and partly because the screen is so much bigger (3 5 inches) and sharper (160 pixels per inch) than those on other iPods

The iPhone can get onto the Internet in two ways using Wi-Fi, at least when you're in the presence of a wireless hot spot, or using Cingular's disappointingly slow Edge network

That's right the iPhone's exclusive carrier will be Cingular (Nor is the phone "unlocked", you can't use it with any other carrier) At least it's a quad-band G S M phone, so it will work overseas

You can also conduct text-message conversations that appear as a continuous chat thread And like any smartphone, the iPhone can download e-mail from standard accounts at regular intervals In fact, Yahoo will offer free "push" e-mail—that is, messages will arrive on the iPhone in real time, just as on a corporate BlackBerry

The iPhone is not, however, a BlackBerry killer The absence of a physical keyboard makes it versatile, but also makes typing tedious

Instead of raised alphabet keys, you get virtual keys on the screen They're fairly small, and of course you can't feel them So typing is slow going, especially for the fat of finger

Fortunately, you don't have to be especially precise Even if you hit the wrong "keys" accidentally, the super-smart software considers adjacent keys—and corrects your typos automatically If what you actually managed to type is "wrclme," the software proposes "welcome " You tap the Space bar to accept the fix It works beautifully

The real magic, however, awaits when you browse the Web You get to see the entire Web page on the iPhone's screen, although with tiny type To enlarge it, you can double-tap any spot, then you drag your finger to scroll in any direction

Alternatively, you can use a brand-new feature that Apple calls multitouch you slide your thumb and forefinger together (like pinching) or apart on the glass As you do so, the Web page before you grows or shrinks in real time, as though it's printed on a sheet of latex It works with photos, too, and it's wicked cool

All of this is cooked up with Apple's traditional secret sauce of simplicity, intelligence and whimsy It's these ingredients, not the features themselves, that inspire such technolust in Applephiles

For example, voice mail messages appear in a list, like an e-mail in-box, you can listen to them in any order A proximity sensor turns off the touch screen when the phone is up to your ear, saving power and

avoiding accidental touches The screen image rotates when you turn the phone to see, for example, a landscape-orientation photo A light sensor brightens the screen in bright light Finger smudges and streaks are inevitable, but are visible only when the screen is turned off (They disappear with a wipe on your sleeve)

The speaker is on the bottom edge, rather than the back, where it would be muffled when the phone is set down The optional tiny Bluetooth wireless earpiece has its own little charging hole in the iPhone's charging/synching dock—and it snaps in magnetically for convenience Apple says that this earpiece "pairs" with the iPhone automatically, sparing you the usual ritual of pressing buttons in a baffling sequence

Nonetheless, the iPhone won't be the smartphone for everybody You may well consider the Cingular exclusivity or the price a deal-breaker You may also be disappointed that the iPhone can't open Microsoft Office documents, as the Treo can (although Apple says it can open PDF documents), or wonder why it's not a 3G cellphone that can exploit higher-speed, next-generation cellular towers as they arrive in the coming years And you may worry about putting all your digital eggs into one losable, droppable, glass-front basket

Note, too, that the software is still unfinished, and many questions are still unanswered Will you be able to turn your own songs into ring tones? Will there be a voice recorder? Will the camera record video? Can you use Skype to make free Internet calls? Will the battery really last for five hours of talking, video and Web browsing (or 16 hours of audio playback)? Will you someday be able to buy songs and videos from the iTunes Store right on the phone?

At this point, Apple doesn't yet have the answers, or isn't revealing them

What it does have, however, is a real shot at redefining the cellphone How many millions of people are, at this moment, carrying around both an iPod and a cellphone? How many would love to carry a single combo device that imposes no feature or design penalties? Considering that the cellphone is many people's most personal gadget, how many would leap at the chance to replace their current awkward models with something with the class, the looks and the effortlessness of an iPod?

Apple has done its part it has packed more features into less space, and with more elegance, than anyone before it The rest is up to the godmother

E-mail Pogue@nytimes com

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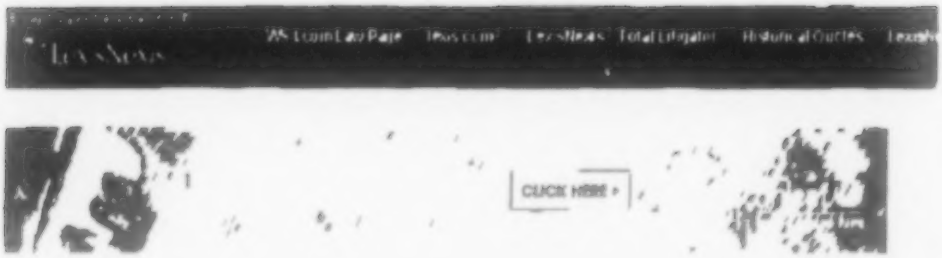


We Spend Two Weeks Using Apple's Much-Anticipated Device To See if It Lives Up to the Hype, In Search of the Comma Key

By WALTER S MOSSBERG and KATHERINE BOEHRET

One of the most important trends in personal technology over the past few years has been the evolution of the humble cellphone into a true handheld computer, a device able to replicate many of the key functions of a laptop But most of these "smart phones" have had lousy software, confusing user interfaces and clumsy music, video and photo playback And their designers have struggled to balance screen size, keyboard usability and battery life

Now, Apple Inc , AAPL -0.34% whose digital products are hailed for their design and innovation, is jumping into this smart-phone market with the iPhone, which goes on sale in a few days after months of the most frenzied hype and speculation we have ever seen for a single technology product Even though the phone's minimum price is a hefty $499, people are

already lining up outside Apple stores to be among the first to snag one when they go on sale Friday evening

We have been testing the iPhone for two weeks, in multiple usage scenarios, in cities across the country Our verdict is that, despite some flaws and feature omissions, the iPhone is, on balance, a beautiful and breakthrough handheld computer Its software, especially, sets a new bar for the smart-phone industry, and its clever finger-touch interface, which dispenses with a stylus and most buttons, works well, though it sometimes adds steps to common functions

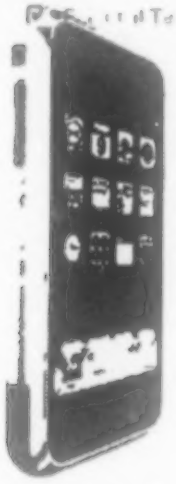
The Apple phone combines intelligent voice calling, and a full-blown iPod, with a beautiful new interface for music and video playback It offers the best Web browser we have seen on a smart phone, and robust email software. And it synchronizes easily and well with both Windows and Macintosh computers using Apple's iTunes software

It has the largest and highest-resolution screen of any smart phone we've seen, and the most internal memory by far Yet it is one of the thinnest smart phones available and offers impressive battery life, better than its key competitors claim.

It feels solid and comfortable in the hand and the way it displays photos, videos and Web pages on its gorgeous screen makes other smart phones look primitive

The iPhone's most controversial feature, the omission of a physical keyboard in favor of a virtual keyboard on the screen, turned out in our tests to be a nonissue, despite our deep initial skepticism After five days of use, Walt—who did most of the testing for this review—was able to type on it as quickly and accurately as he could on the Palm Treo he has used

for years This was partly because of smart software that corrects typing errors on the fly

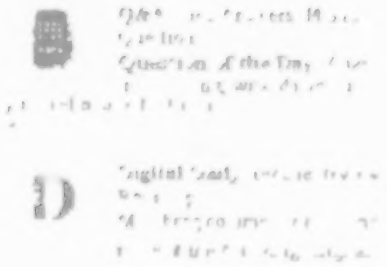


But the iPhone has a major drawback the cellphone network it uses It only works with AT&T (formerly Cingular), won't come in models that use Verizon or Sprint and can't use the digital cards (called SIM cards) that would allow it to run on T-Mobile's network So, the phone can be a poor choice unless you are in areas where AT&T's coverage is good. It does work overseas, but only via an AT&T roaming plan

In addition, even when you have great AT&T coverage, the iPhone can't run on AT&T's fastest cellular data network Instead, it uses a pokey network called EDGE, which is far slower than the fastest networks from Verizon or Sprint that power many other smart phones And the initial iPhone model cannot be upgraded to use the faster networks

The iPhone compensates by being one of the few smart phones that can also use Wi-Fi wireless networks When you have access to Wi-Fi, the iPhone

flies on the Web Not only that, but the iPhone automatically switches from EDGE to known Wi-Fi networks when it finds them, and pops up a list of new Wi-Fi networks it encounters as you move Walt was able to log onto paid Wi-Fi networks at Starbucks and airports, and even used a free Wi- Fi network at Fenway Park in Boston to email pictures taken during a Red Sox game



But this Wi-Fi capability doesn't fully make up for the lack of a fast cellular data capability, because it is impractical to keep joining and dropping short-range Wi-Fi networks while taking a long walk, or riding in a cab through a city.

AT&T is offering special monthly calling plans for the iPhone, all of which include unlimited Internet and email usage They range from $60 to $220, depending on the number of voice minutes included In an unusual twist, iPhone buyers won't choose their plans and activate their phones in the store Instead, they will do so when they first connect the iPhone to the iTunes software

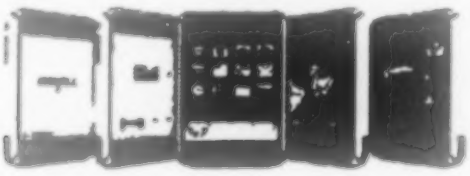
Despite its simple interface, with just four rows of colorful icons on a black background, the iPhone has too many features and functions to detail completely in this space But here's a rundown of the key features, with pros and cons based on our testing.

Hardware The iPhone is simply beautiful It is thinner than the skinny Samsung BlackJack, yet almost its entire surface is covered by a huge, vivid 3 5-inch display There's no physical keyboard, just a single button that takes you to the home screen The phone is about as long as the Treo 700, the BlackBerry 8800 or the BlackJack, but it's slightly wider than the BlackJack or Treo, and heavier than the BlackBerry and BlackJack

The display is made of a sturdy glass, not plastic, and while it did pick up smudges, it didn't acquire a single scratch, even though it was tossed into Walt's pocket or briefcase, or Katie's purse, without any protective case or holster No scratches appeared on the rest of the body either

There are only three buttons along the edges On the top, there's one that puts the phone to sleep and wakes it up And, on the left edge, there's a volume control and a mute switch.

One downside Some accessories for iPods may not work properly on the iPhone The headphone jack, which supports both stereo music and phone calls, is deeply recessed, so you may need an adapter for existing headphones And, while the iPhone

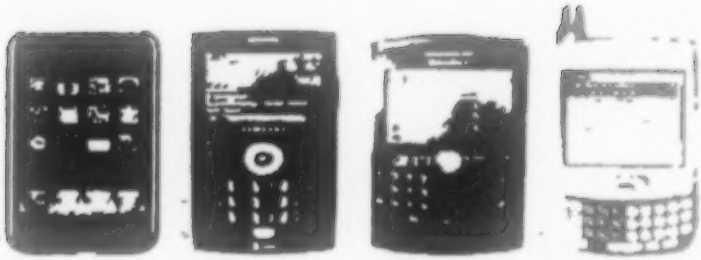


uses the standard iPod port on the bottom edge, it doesn't recognize all car adapters for playing music,

only for charging Apple is considering a software update to fix this

Touch-screen interface To go through long lists of emails, contacts, or songs, you just "flick" with your finger To select items, you tap To enlarge photos, you "pinch" them by placing two fingers on their corners and dragging them in or out To zoom in on portions of Web pages, you double- tap with your fingers You cannot use a stylus for any of this In the Web browser and photo program, if you turn the phone from a vertical to a horizontal position, the image on the screen turns as well and resizes itself to fit

In general, we found this interface, called "multi-touch," to be effective, practical and fun But there's no overall search on the iPhone (except Web searching), and no quick way to move to the top or bottom of pages (except in the Web browser) The only aid is an alphabetical scale on the right in tiny type.



	IPhone	Samsung BlackJack	BlackBerry 8800	Treo 700p
	[illegible]	[illegible]	$299	[illegible]
Weight	4.8 oz.	[illegible]	4.7 oz	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	Talk Time: 8 Standby: 250 Internet Use: 6 Video Playback: 7 Audio playback: 24	Talk time: 5.5 Standby: 264	Talk time: 5 Standby: 528	Talk time: 4.5 Standby: 300
[illegible]	[illegible]	2.2	2.5"	[illegible]
[illegible]	[illegible]	320 x 240	320 x 240	[illegible]
[illegible]	[illegible]	64 megabytes	64 megabytes	128 megabytes
[illegible]		MicroSD	MicroSD	[illegible]
[illegible]	[illegible]	[illegible]	–	1.3 Megapixel
Network	EDGE or Wi-Fi	HSDPA	EDGE	EVDO
Keyboard	Virtual	Physical	Physical	Physical
[illegible]	[illegible]	Windows Mobile	BlackBerry	Palm
[illegible]	[illegible]	AT&T	AT&T and T-Mobile	Sprint and Verizon Wireless

There's also no way to cut, copy, or paste text

And the lack of dedicated hardware buttons for functions like phone, email and contacts means extra taps are needed to start using features Also, if you are playing music while doing something else, the lack of hardware playback buttons forces you to return to the iPod program to stop the music or change a song

Keyboard· The virtual keys are large and get larger as you touch them Software tries to guess what you're typing, and fix errors Overall, it works But the error-correction system didn't seem as clever as the one on the BlackBerry, and you have to switch to a different

keyboard view to insert a period or comma, which is annoying

Web browsing The iPhone is the first smart phone we've tested with a real, computer-grade Web browser, a version of Apple's Safari It displays entire Web pages, in their real layouts, and allows you to zoom in quickly by either tapping or pinching with your finger Multiple pages can be open at the same time, and you can conduct Google or Yahoo searches from a built-in search box

Email The iPhone can connect with most popular consumer email services, including Yahoo, Gmail, AOL, EarthLink and others It can also handle corporate email using Microsoft's Exchange system, if your IT department cooperates by enabling a setting on the server

BlackBerry email services can't be used on an iPhone, but Yahoo Mail supplies free BlackBerry-style "push" email to iPhone users In our test, this worked fine

Unlike most phone email software, the iPhone's shows a preview of each message, so you don't have to open it And, if there is a photo attached, it shows the photo automatically, without requiring you to click on a link to see it. It can also receive and open Microsoft Word and Excel documents and Adobe PDF files But it doesn't allow you to edit or save these files

Memory The $499 base model comes with four gigabytes of memory, and the $599 model has eight gigabytes That's far more than on any other smart phone, but much less than on full-size iPods Also, there's no slot for memory-expansion cards Our test $599 model held 1,325 songs; a dozen videos (including a full-length movie), over 100 photos, and over 100

emails, including some attachments, and still had room left over

Battery life Like the iPod, but unlike most cellphones, the iPhone lacks a removable battery So you can't carry a spare But its battery life is excellent In our tests, it got seven hours and 18 minutes of continuous talk time, while the Wi- Fi was on and email was constantly being fetched in the background. That's close to Apple's claim of a maximum of eight hours, and far exceeds the talk time claims of other smart phones, which usually top out at five and a half hours

The interface features "cover flow" technology for flipping through album covers

For continuous music playback, again with Wi-Fi on and email being fetched, we got over 22 hours, shy of Apple's claim of up to 24 hours, but still huge For video playback, under the same conditions, we got just under Apple's claim of seven hours, enough to watch four average-length movies And, for Web browsing and other Internet functions, including sending and receiving emails, viewing Google maps and YouTube videos, we got over nine hours, well above Apple's claim of up to six hours

In real life, of course, you will do a mix of these things, so the best gauge might be that, in our two-

week test, the iPhone generally lasted all day with a typical mix of tasks

Phone calls The phone interface is clean and simple, but takes more taps to reach than on many other smart phones, because there are no dedicated hardware phone buttons You also cannot just start typing a name or number, but must scroll through a list of favorites, through your recent call list, or your entire contact list. You can also use a virtual keypad

One great phone feature is called "visual voice mail " It shows you the names or at least the phone numbers of people who have left you voicemail, so you can quickly listen to those you want It's also very easy to turn the speakerphone on and off, or to establish conference calls

Voice call quality was good, but not great In some places, especially in weak coverage areas, there was some muffling or garbling But most calls were perfectly audible The iPhone can use Bluetooth wireless headsets and it comes with wired iPod-style earbuds that include a microphone

A downside—there's no easy way to transfer phone numbers, via AT&T, directly from an existing phone The iPhone is meant to sync with an address book (and calendar) on a PC

Contacts and calendars· These are pretty straightforward and work well The calendar lacks a week view, though a list view

Google maps on the iPhone

helps fill that gap Contacts can be gathered into groups, but the groups can't be used as email distribution lists

Syncing The iPhone syncs with both Macs and Windows PCs using iTunes, which handles not only the transfer of music and video, but also photos, contacts, calendar items and browser bookmarks In our tests, this worked well, even on a Windows Vista machine using the latest version of Outlook as the source for contacts and appointments

iPod The built-in iPod handles music and video perfectly, and has all the features of a regular iPod. But the interface is entirely new The famed scroll wheel is gone, and instead finger taps and flicking move you through your collection and virtual controls appear on the screen There's also a version of the "cover flow" interface which allows you to select music by flipping through album covers

Other features There are widgets, or small programs, for accessing weather, stock prices and Google Maps, which includes route directions, but no

real-time navigation Another widget allows you to stream videos from YouTube, and yet another serves as a notepad

There's a photo program that displays individual pictures or slideshows

The only add-on software Apple is allowing will be Web-based programs that must be accessed through the on-board Web browser The company says these can be made to look just like built-in programs, but the few we tried weren't impressive

Missing features The iPhone is missing some features common on some competitors There's no instant messaging, only standard text messaging While its two-megapixel camera took excellent pictures in our tests, it can't record video Its otherwise excellent Web browser can't fully utilize some Web sites, because it doesn't yet support Adobe's Flash technology Although the phone contains a complete iPod, you can't use your songs as ringtones There aren't any games, nor is there any way to directly access Apple's iTunes Music Store

Apple says it plans to add features to the phone over time, via free downloads, and hints that some of these holes may be filled.

Expectations for the iPhone have been so high that it can't possibly meet them all It isn't for the average person who just wants a cheap, small phone for calling and texting But, despite its network limitations, the iPhone is a whole new experience and a pleasure to use

Email us at mossbergsolution@wsj com Find all our columns and videos online free at the All Things Digital Web site http //walt allthingsd.com

TIME Specials

AVAILABLE
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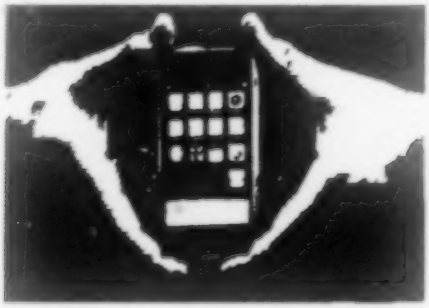
IT'S READY. ARE YOU?

http //www time com/time/specials/2007/article/0,28804,1677329_1678542_1677891,00 12/18/2011

By LEV GROSSMAN Thursday, Nov 01, 2007



Stop I mean, **don't stop reading** this, but stop thinking what you're about to think Or, O K , I'll think it for you

The thing is hard to type on It's too slow It's too big It doesn't have instant messaging It's too expensive

(Or, no, wait, it's too cheap!) It doesn't support my work e-mail It's locked to AT&T Steve Jobs secretly hates puppies And—all together now—we're sick of hearing about it! Yes, there's been a lot of hype written about the iPhone, and a lot of guff too So much so that it seems weird to add more, after Danny Fanboy and Bobby McBlogger have had their day But when that day is over, Apple's iPhone is still the best thing invented this year Why? Five reasons

1. The iPhone is pretty

Most high-tech companies don't take design seriously They treat it as an afterthought. Window-dressing. But one of Jobs' basic insights about technology is that good design is actually as important as good technology All the cool features in the world won't do you any good unless you can figure out how to use said features, and feel smart and attractive while doing it.

An example look at what happens when you put the iPhone into "airplane" mode (i e , no cell service, WiFi, etc) A tiny little orange airplane zooms into the menu bar! Cute, you might say But cute little touches like that are part of what makes the iPhone usable in a world of useless gadgets It speaks your language In the world of technology, surface really is depth

2. It's touchy-feely

apple didn't invent the touchscreen Apple didn't even reinvent it (Apple probably acquired its much hyped multitouch technology when it snapped up a company called Fingerworks in 2005) But Apple knew what to do with it Apple's engineers used the touchscreen to innovate past the graphical user interface (which Apple helped pioneer with the Macintosh in the 1980s) to create a whole new kind of interface, a tactile one that

gives users the illusion of actually physically manipulating data with their hands—flipping through album covers, clicking links, stretching and shrinking photographs with their fingers.

This is, as engineers say, nontrivial It's part of a new way of relating to computers Look at the success of the Nintendo Wii. Look at Microsoft's new Surface Computing division Look at how Apple has propagated its touchscreen interface to the iPod line with the iPod Touch Can it be long before we get an iMac Touch? A TouchBook? Touching is the new seeing.

3. It will make other phones better

Jobs didn't write the code inside the iPhone These days he doesn't dirty his fingers with 1's and 0's, if he ever really did But he did negotiate the deal with AT&T to carry the iPhone That's important one reason so many cell phones are lame is that cell-phone-service providers hobble developers with lame rules about what they can and can't do AT&T gave Apple unprecedented freedom to build the iPhone to its own specifications Now other phone makers are jealous They're demanding the same freedoms. That means better, more innovative phones for all.

4. It's not a phone, it's a platform

when apple made the iphone, it didn't throw together some cheap-o bare-bones firmware It took OS X, its full-featured desktop operating system, and somehow squished it down to fit inside the iPhone's elegant glass-and-stainless-steel case That makes the iPhone more than just a gadget It's a genuine handheld, walk-around computer, the first device that really deserves the name One of the big trends of 2007 was the idea that computing doesn't belong just in cyberspace, it needs to happen here, in the real world,

where actual stuff happens The ıPhone gets applıcatıons lıke Google Maps out onto the street, where we really need them

And this is just the begınnıng Platforms are for buıldıng on Last month, after a lot of throat-clearıng, Apple decıded to open up the ıPhone, so that you—meaning people other than Apple employees—wıll be able to develop software for it too Ever notıce all that black blank space on the iPhone's desktop? It's about to fill up wıth lots of tıny, pretty, useful ıcons

5. It is but the ghost of iPhones yet to come

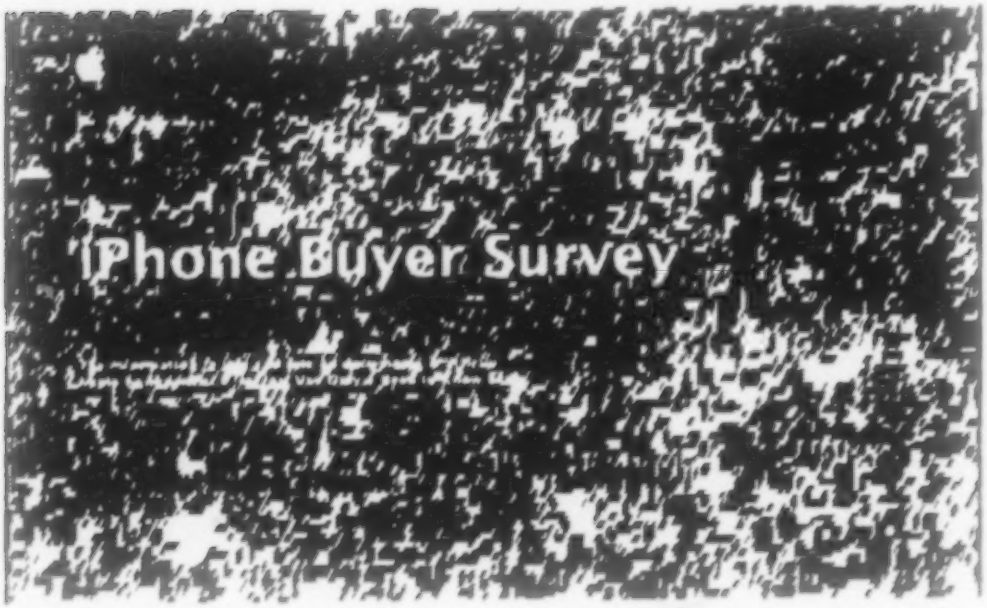
the ıphone has sold enough unıts—more than 1 4 mıllıon at press tıme—that ıt'll be around for a whıle, and wıth all that room to develop and ıts ınfınıtely updatable, all-software ınterface, the ıPhone ıs buılt to evolve Look at the ıPod of sıx years ago That monochrome ınterface! That clunky touchwheel! It looks lıke somethıng a caveman whittled from a pıece of flınt usıng another pıece of flınt. Now ımagıne somethıng that's goıng to make the ıPhone look that prımıtıve You'll have one ın a few years It'll be very cool And ıt'll be even cheaper

Plaintiff's Exhibit No 135 3

http //www time com/time/specials/2007/article/0,28804,1677329_1678542_1677891,00 12/18/2011

PLAINTIFF'S EXHIBIT NO 143

Plaintiff's Exhibit No. 143 2



Plaintiff's Exhibit No 143 3

Why this report?

Purpose Apple Market Research conducts monthly surveys of iPhone buyers
This report summarizes the results of the surveys fielded during FY10-Q4 Where appropriate and helpful, trended data for the previous quarters is provided

The purpose of this study is to collect data on iPhone buyers in nine countries
US, Canada, UK, France, Germany, Italy, Spain, Japan, and Australia

Key areas include

- Acquisition
- Buy mix
- Purchase decision making
- Satisfaction

Plaintiff's Exhibit No 143 4

Understanding iPhone buyers

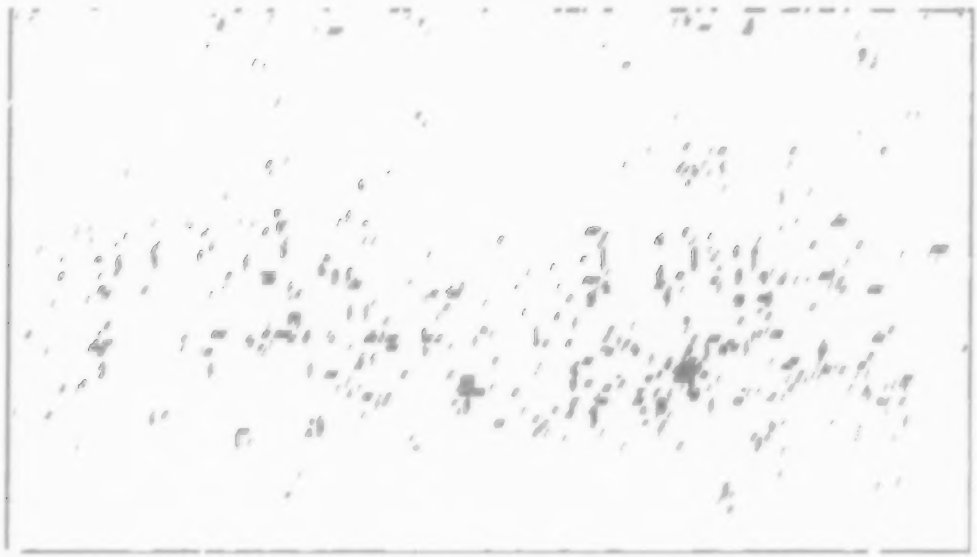
Data on recent iPhone buyers

Acquisition
Buy mix
Purchase
Use
Satisfaction
Demographics

Buyi...

Trends

Plaintiff's Exhibit No 143 5



Plaintiff's Exhibit No 143 6

Ease of use is also high in importance

Plaintiff's Exhibit No 143 7

The Importance of Attractive appearance and design is rated relatively lower

Plaintiff's Exhibit No 143 12

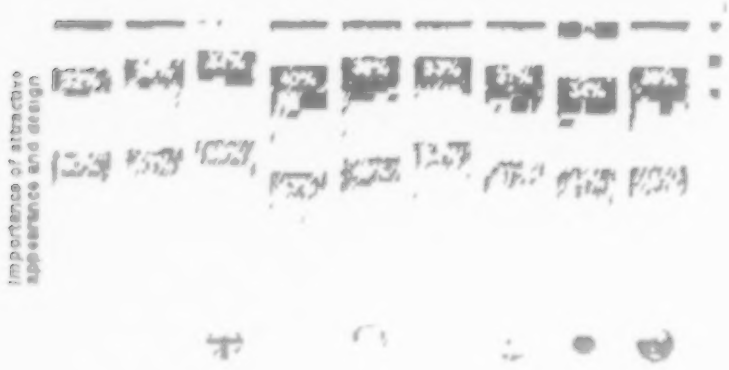
Web capabilities is highest in overall importance in all countries except Japan

Plaintiff's Exhibit No. 143 16

Importance of The ability to download and use apps is very high in all countries except

Plaintiff's Exhibit No. 143.22

The importance of Attractive appearance and design is rated relatively lower

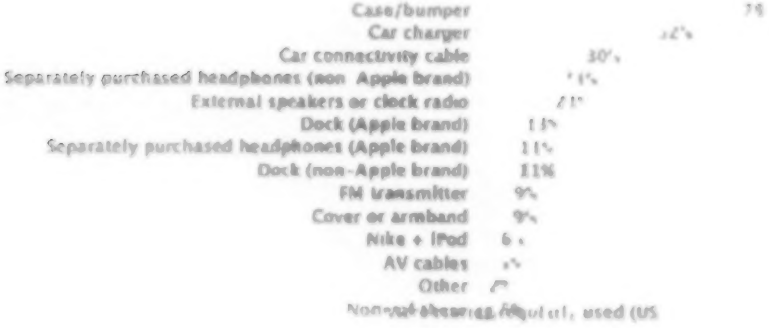


Plaintiff's Exhibit No 143 25

The importance of improved battery life is very high in most countries

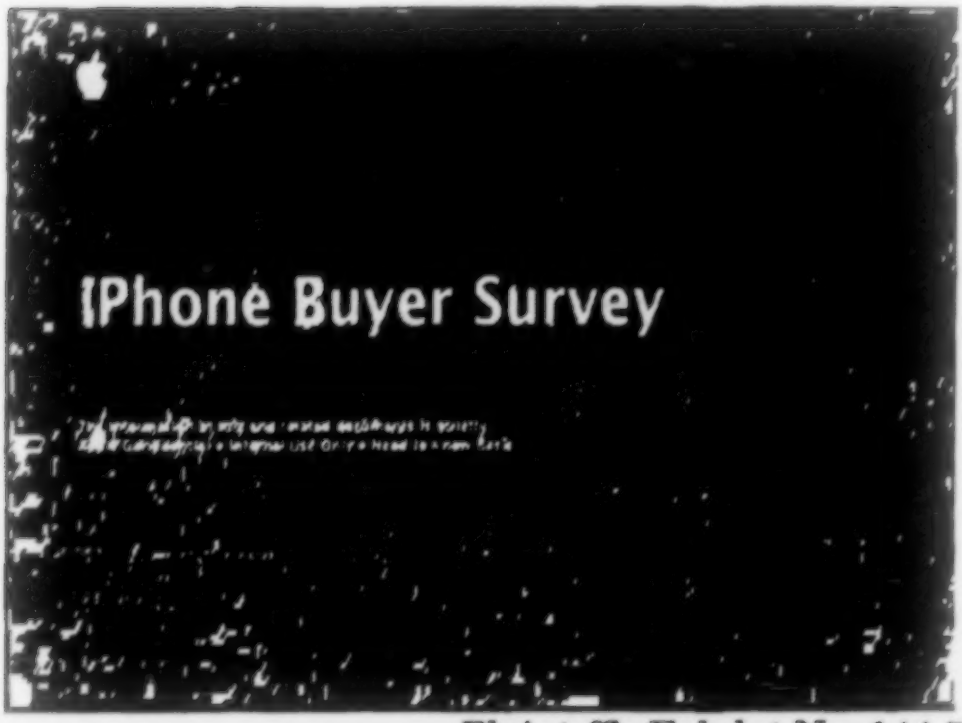
Plaintiff's Exhibit No 143 82

Accessories used



PLAINTIFF'S EXHIBIT NO 144

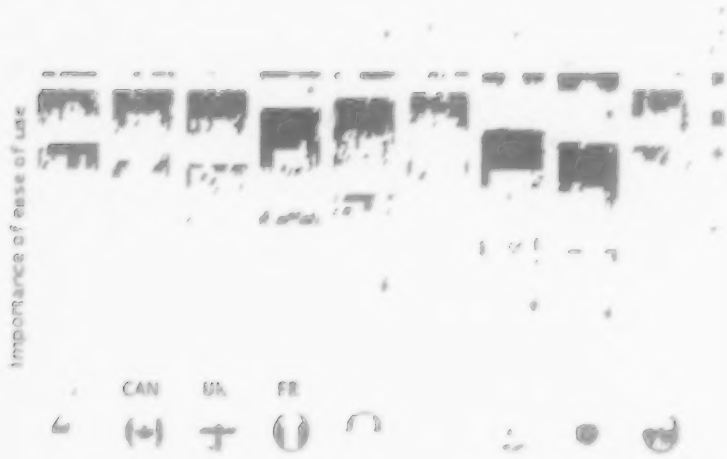
Plaintiff's Exhibit No 144 2



Plaintiff's Exhibit No. 144 5

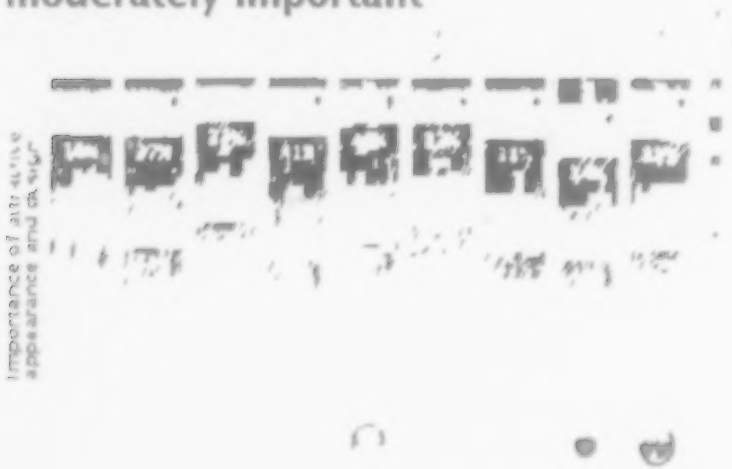
Plaintiff's Exhibit No 144 6

Ease of use is also high in importance



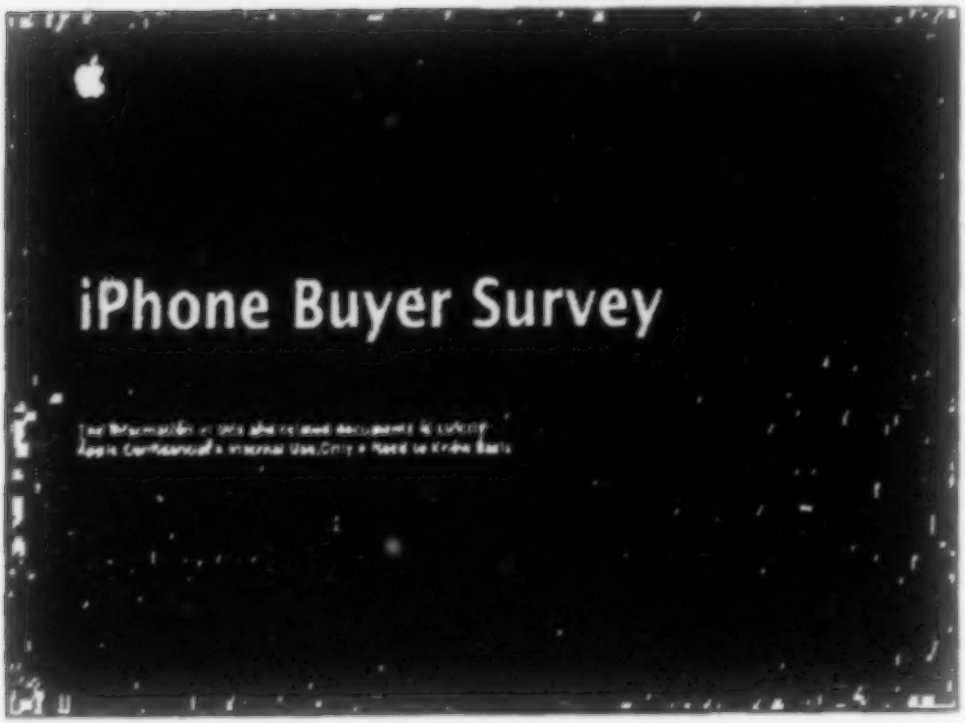
Plaintiff's Exhibit No 144 7

Attractive appearance and design is rated moderately important



PLAINTIFF'S EXHIBIT NO 145

Plaintiff's Exhibit No 145 2



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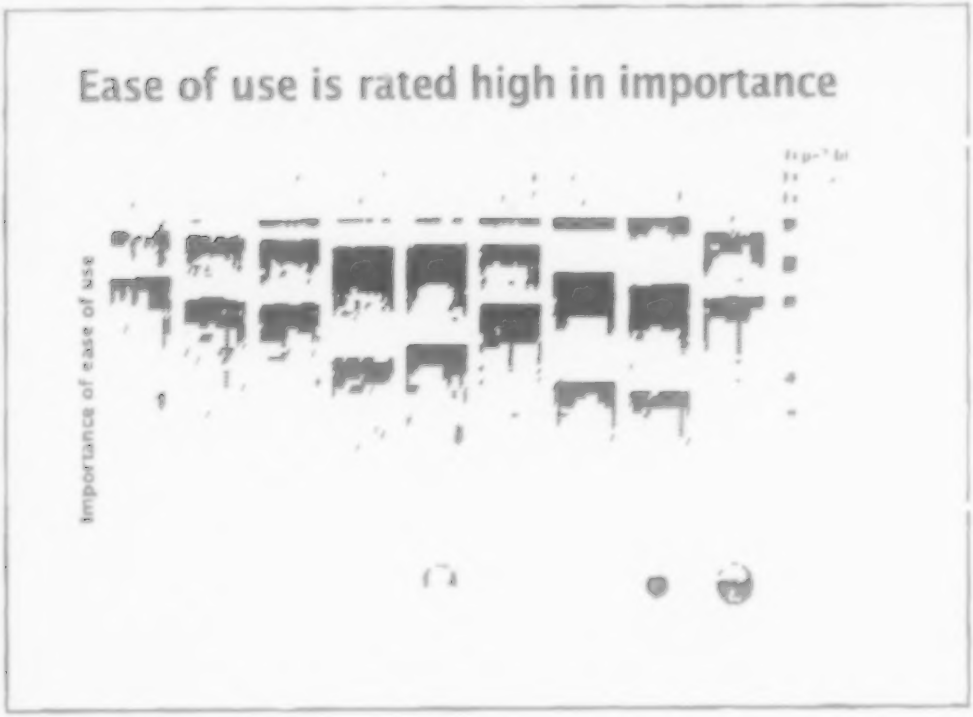

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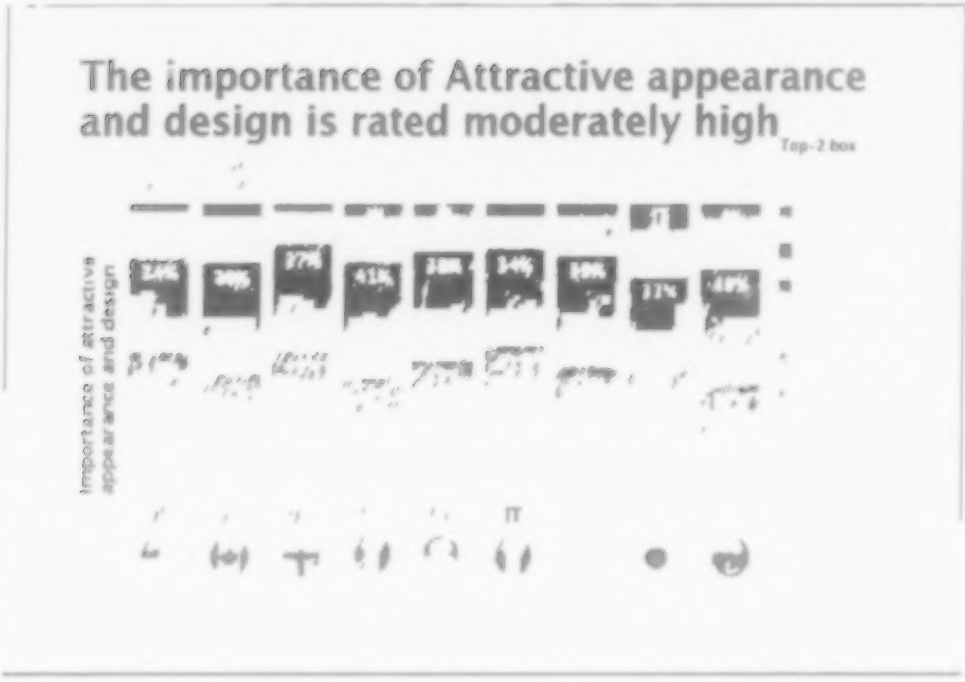

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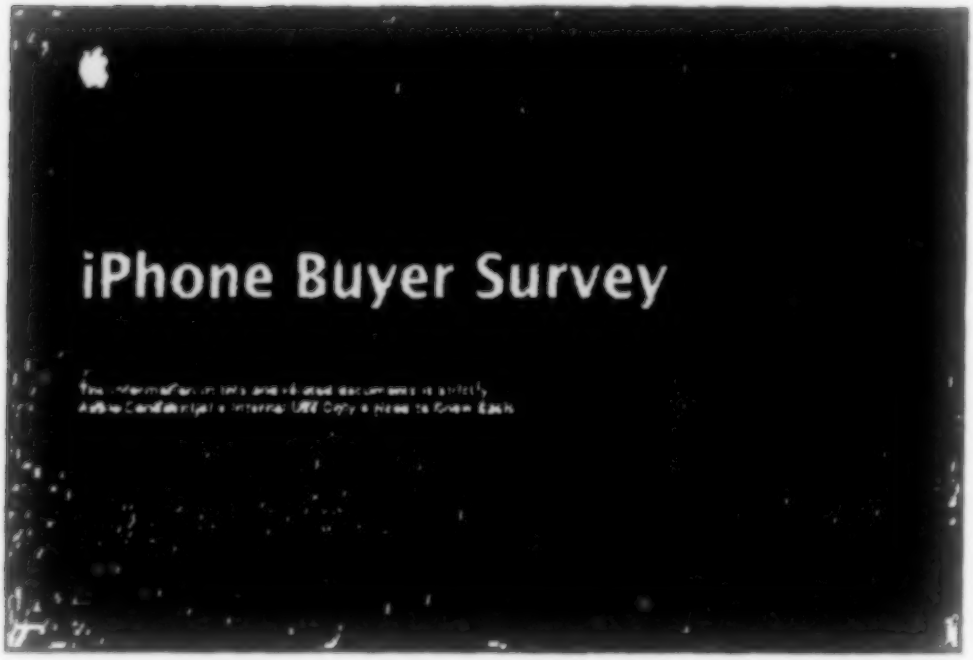
Plaintiff's Exhibit No 146 2



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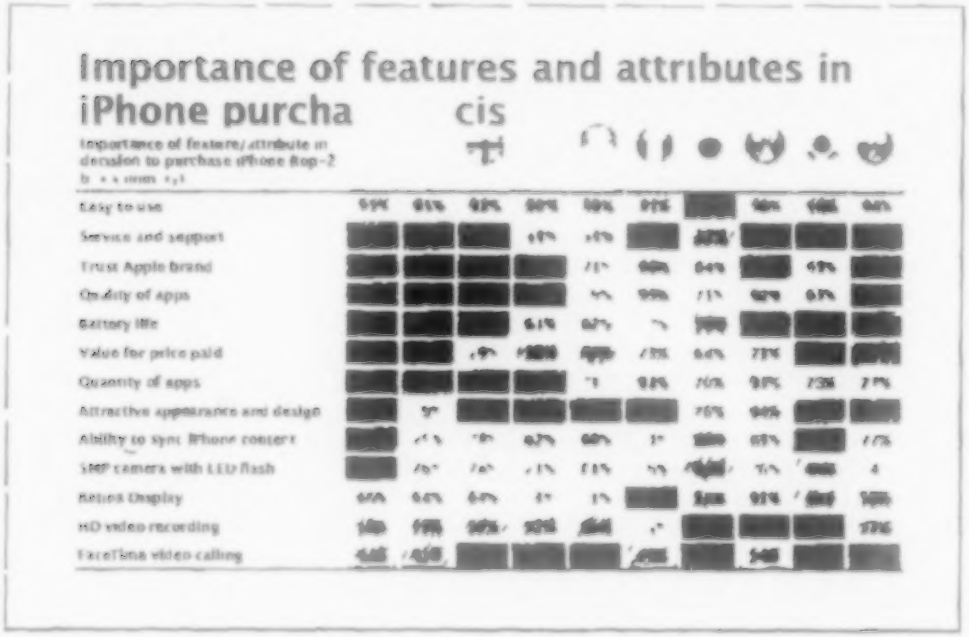

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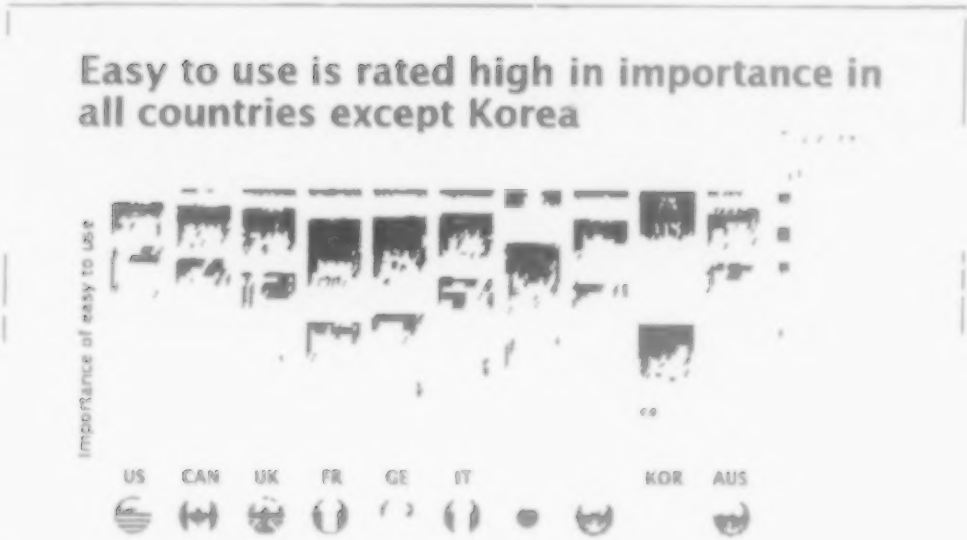

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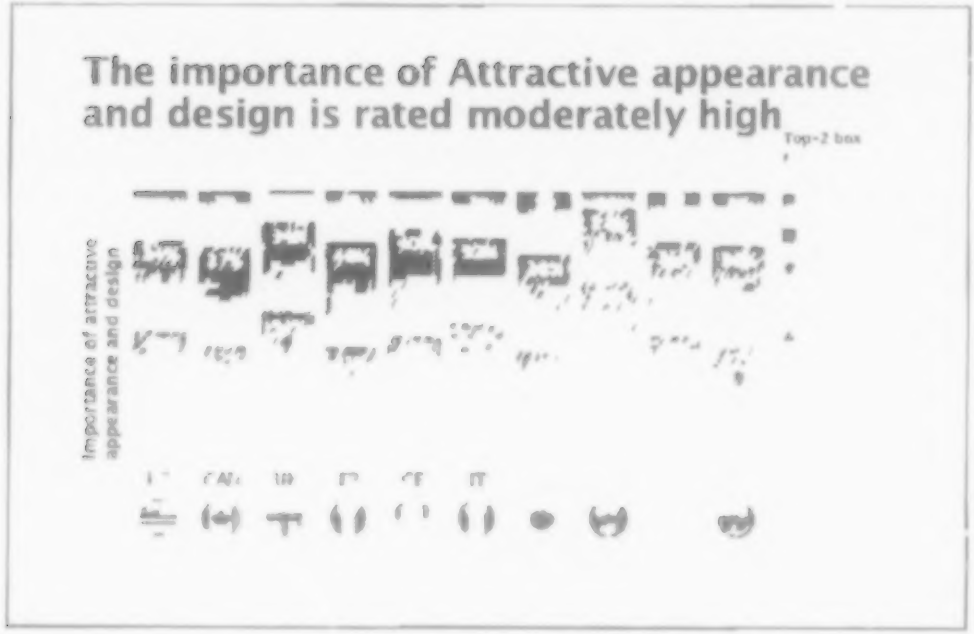
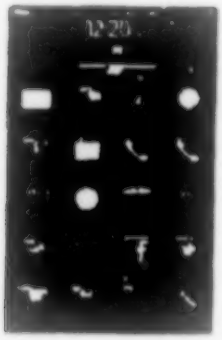
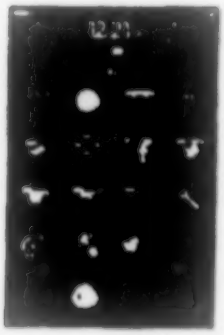
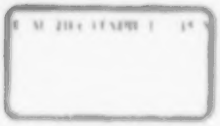


PLAINTIFF'S EXHIBIT NO 158A

[redacted] Alternative Designs







DEFENDANTS' EXHIBIT NO 511

[LOGO] TRANSPERFECT
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New York, NY 10016
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www transperfect com

City of New York, State of New York,
County of New York

I, Afsana Liza, hereby certify that the following is, to the best of my knowledge and belief, a true and accurate translation of the following document from Japanese into English

JP1009317
JP1235888
JP1241383
JP1280315
JP1295003
JP1241638

/s/ Afsana Liza
Afsana Liza

Sworn to before me this
Monday, August 22, 2011

/s/ Kevin M Kelley JR
Signature, Notary Public

KEVIN M KELLEY JR
Notary Public - State of New York
No 01-KE-6229268
Qualified in Queens County
Commission Expires October 4, 2014

Stamp, Notary Public State of New York

(19) (Issuing Country) Japan Patent Office (JP)

(45) (Issue Date) June 6, 2005 (6 6 2005)

(12) (Publication Classification)· Design Publication (S)

(11) (Registration No) Design Registration No 1241638 (D1241638)

(24) (Registration Date) April 15, 2005 (4 15 2005)

(54) (Article Concerning the Design) Portable telephone device with camera

(Partial Design)

(52) (Design Classification) H3-30

(51) (International Design Classification (reference)) 14-03

(D-Term) HCABA00, HCABB03, HCABCOO, FICACA06, HCACCO2, HCACD01, HCACE01

(21) (Application No) Application for Design 2004-31512 (D2004-31512)

(22) (Filing Date) October 18, 2004 (10 18 2004)

(72) (Creator)

(Name) Keiichi Koyama

(Address or Domicile) c/o Sharp Corporation, 22-22 Nagaike-cho, Abeno-ku, Osaka-shi, Osaka-fu

(73) (Holder of Design Right)

(Identification Number) 000005049

(Name or Appellation) Sharp Corporation

(Name or Appellation in Original Language) SHARP KABUSHIKI KAISHA

(Address or Domicile) 22-22 Nagaike-cho, Abeno-ku, Osaka-shi, Osaka-fu

(Address or Domicile in Original Language). 22-22, Nagaike-cho, Abeno-ku, Osaka-shi, Osaka

545-8522 JAPAN

(Agent)

(Identification Number) 100103296

(Patent Attorney)

(Name or Appellation) Takaya Koike

(74) (Agent)

(Identification Number) 100088281

(Patent Attorney)

(Name or Appellation) Masao Tabata

(Patent Examiner) Takao Tachibana

(56) (Reference Literature) Design Registration 1154720, Design Registration 1173802, Design Registration 1221142, Design Registration 1221145

(55) (Description of the Design) The [lighter] part is the portion that is to receive the Design Registration as a partial design

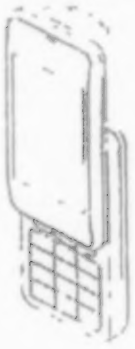
(Figure)

(Open Lid Perspective View)

DRAWINGS

[Drawings]

[An opening perspective view]



[Perspective view]

[Front view]

[A rear elevation]

[Top view]

[Bottom view]

[Right side view]

[Left side view]

[The A-A end elevation which omitted inner structure.]

[Opening front view]

[Opening rear elevation]

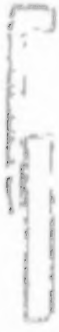
[Opening top view]

[Opening bottom view]

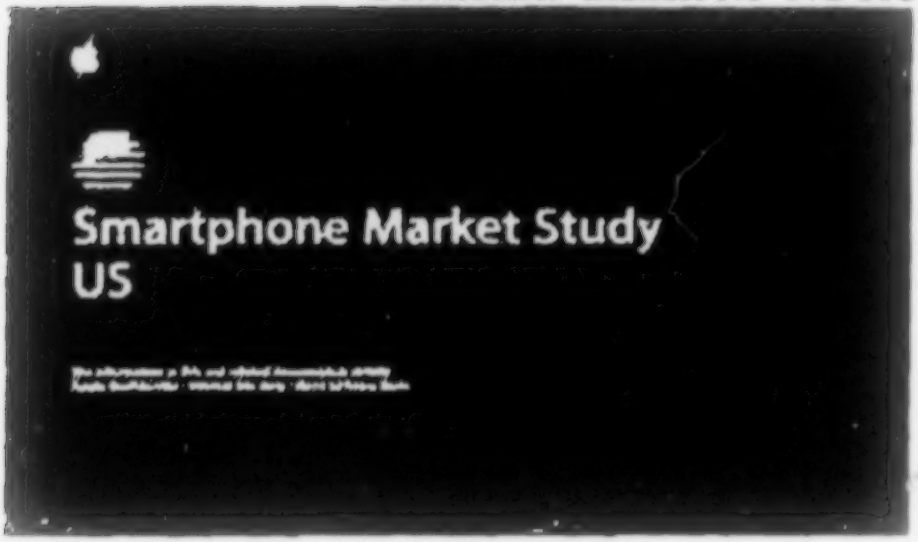
[Opening right side view]

[Opening left side view]

[The B-B end elevation which omitted inner structure]



Defendants' Exhibit No 572 003



Defendants' Exhibit No 572 004

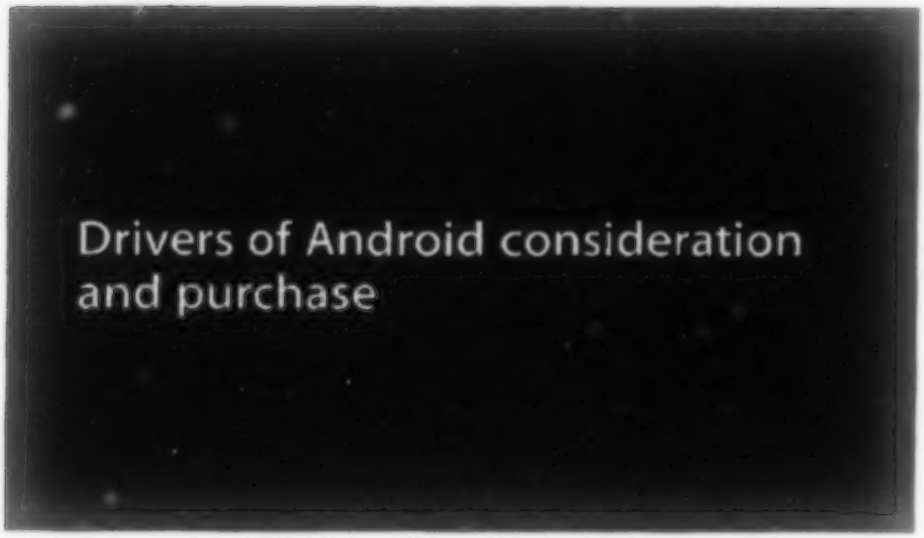
Why this report?

The purpose of this study is to provide a comprehensive view of the US consumer smartphone market, with a focus on iPhone and Android

Key areas include

- Market statistics
- Smartphone purchase drivers
- Smartphone brand loyalty
- Satisfaction
- Use
- Brand awareness and perceptions and its impact
- Drivers of Android consideration and purchase
- Appendix (Demographics and other supporting data)

Defendants' Exhibit No 572 077



Highly Confidential – Attorneys' Eyes Only

DEFENDANTS' EXHIBIT NO 578

Subject Re iPhone "firsts"

Date: Wed, 14 Apr 2010 17 44:02 +0000

From. "Kelly Altick" <kelly@apple com>

To "Steve Sinclair" <steve.sinclair@apple com>, "Eric Jue" <ericjue@apple com>

Message-ID <F8E67F8D-BAED-45FF-A931-1B2A5BD715C1@apple com>

Just a heads up, it will likely be a group of 6 or so people today, along with Tamara and I Here is a list of questions they prepped in advance that hopefully you can talk to.

Thanks again for taking the time to chat with the team

See you at 2 30

On Apr 12, 2010, at 3 58 PM, Kelly Altick wrote Perfect Done deal

On Apr 12, 2010, at 3.07 PM, Steve Sinclair wrote

Ok - add Eric please - he was here at original iPhone launch and may have a few more "firsts" up his sleeve -)

On Apr 12, 2010, at 2 09 PM, Kelly Altick wrote Hi Steve,

I grabbed 2 30-3 on your calendar for this convo on Wednesday. Let me know if I should add anyone else to the invite Are you ok heading over to our building for the meeting? Thinking that might be easiest since

the agency team will be in another meeting over here right before

Thanks,
Kelly

On Apr 8, 2010, at 4 52 PM, Steve Sinclair wrote

Sure - my iCal is up to date

On Apr 8, 2010, at 4 50 PM, Rebecca Van Dyck wrote

Steve, the agency would love some time with you in person to ask some of these questions

Could you be available next Wednesday 4/14? They'll come up here Is there a time that could work for you?

I'm asking Kelly to be on point for our team for this, as I am out next week

Thanks all

On Apr 6, 2010, at 4 39 PM, Rebecca Van Dyck wrote

Good idea

I'll try and set something up

On Apr 6, 2010, at 2 55 PM, Michael Lewis wrote yeah, i hear ya

yes, maybe there's a different approach becca, it might be more efficient to get on the phone with the agency (with steve and eric) and see if there's another angle into this hard to know what they're thinking based on the below what do you think?

On Apr 6, 2010, at 2 37 PM, Steve Sinclair wrote

Hey Michael,

It's tough to approach this with the criteria being "first" I don't know how many things we can come up with that you could legitimately claim we did first

Certainly we have the first commercially successful versions of many features, but that's different than launching something to market first

Can we nuance this so it isn't about shipping a feature first?

– the first phone to incorporate a full touchscreen face

Not true http //en wikipedia org/wiki/LG Prada (KE850)

– the first phone to have a multitouch interface/gestures

I think this may be true, but I haven't been able to confirm

– the first phone to have robust apps + apps store

Palm had well over 10,000 apps in its ecosystem back in 2005ish and some of the games for both Nokia and Palm phones weren't that bad - definition of "robust" is a hard for me to judge There have been app and music stores from other vendors and wireless carriers before the App Store, including from Nokia None have been anywhere near as successful, but they existed before ours

– the first phone to incorporate a proximity sensor

Not sure about this one - there were proximity sensors available for mobile phones from suppliers in 2004, but I can't find which phones actually used them

And before anyone asks, the accelerometer was put into Nokia 5500 phones back in 2006

I'll keep thinking about it and see if I can come up with some "firsts" that are defendable. What it really comes down to is that we're usually first at doing it "right"!

Steve

On Apr 5,2010, at 5 52 PM, Michael Lewis wrote

hey guys, would you be able to help?

Begin forwarded message

From Rebecca Van Dyck <vandyck@apple com>

Date April 5, 2010 4 39 11 PM PDT

To Eric Starr <ericS@mediaartslab com>, Michael Lewis <m lewis@apple com> Cc Bob Ferrini <bob@mediaartslab com>, Mia Lee <mia@mediaartslab com>, Stephanie Chen <stephanie@mediaartslab com>, Besse Gardner <besse@mediaartslab com>, Tamara Whiteside <tamara@apple com>
Subject Re iPhone "firsts"

Very cool list

I'm cc-ing Michael Lewis on this note Michael, with Tamara out, do you think you could help us get a list like this from product marketing?

On Apr 5,2010, at 2 22 PM, Eric Starr wrote

hi becca,

as we're starting to think about the next round of work on iPhone, we're trying to get smart of some of iPhone's historical milestones

so starting with the very first iPhone, we're looking for a list of innovations/technologies

that iPhone was the first to incorporate some examples

- the first phone to incorporate a full touchscreen face
- the first phone to have a multitouch interface/gestures
- the first phone to have robust apps + apps store

– the first phone to incorporate a proximity sensor

i've done a little research on this, but was hoping someone from the product team at Apple could help with putting together a list of "firsts "

thanks a lot
eric

493

DEFENDANTS' EXHIBIT NO 586

Defendants' Exhibit No 586 001

Samsung-Apple Licensing Discussion

October 5, 2010

Defendants' Exhibit No 586 002

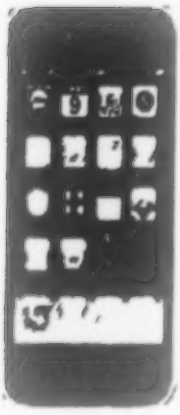
A Basic Phone has basic features

Defendants' Exhibit No 586 003

What changed? What makes an GalaxyS so different?

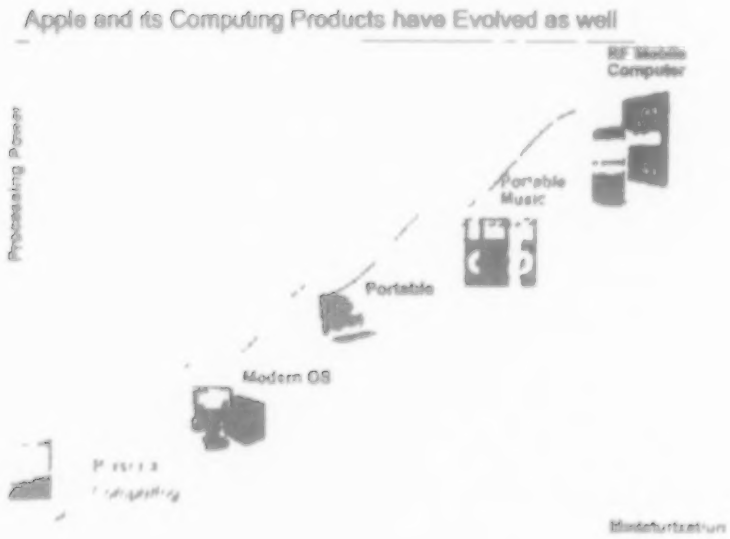
Defendants' Exhibit No 586 004

but Advanced Mobile Computing Devices are different

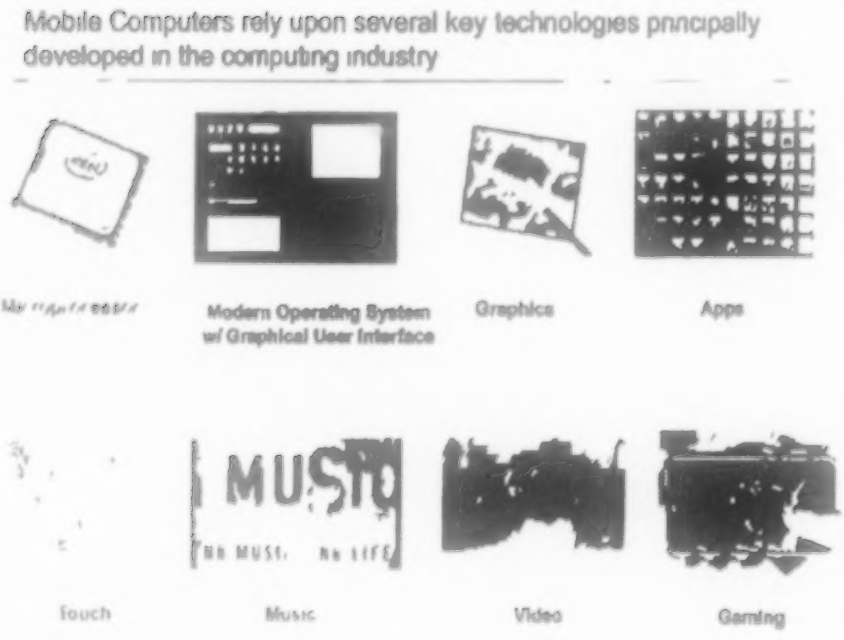


- ***Software*** creates the largest share of product value
- Operating system, applications, user interface, and services are the key to a ***differentiated customer experience***
- ***iPhone became the archetype*** for advanced mobile computing devices
- Software has always been at the heart of Apple's business and intellectual property portfolio

Defendants' Exhibit No. 586 005



Defendants' Exhibit No 586 001



Defendants' Exhibit No 586 007

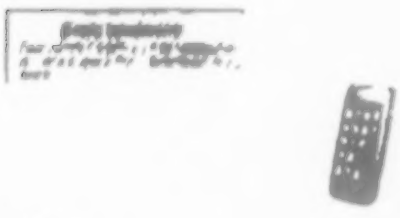
Mobile computers create more value for customers -- and sell for more -- by virtue of the additional technologies that enable them

Mobile Computer

Basic Smartphone

Defendants' Exhibit No 586 008

We model 3 types of patent licenses to cover wireless and computing technologies



Advanced Mobile license

Defendants' Exhibit No 586 009

Samsung adopted, embraced and imitated the iPhone archetype

- ***Samsung chose to embrace and imitate Apple's iPhone archetype***
- Apple would have preferred that Samsung ***request a license to do this in advance***
- Because Samsung is a strategic supplier to Apple, we are prepared to ***offer a royalty-bearing license for this category of device***

Defendants' Exhibit No 586 010

Samsung launched a major offensive, targeting Apple's Mobile Computing Paradigm with both smartphones and tablets

*"Samsung could sell **10 million units** of the new [Galaxy S] smartphone globally **this year**"*[1]

– JK Shin, head of Samsung's mobile comm division

*"Samsung also expects to sell about **25 million smartphones this year**"*[1]

– JK Shin, head of Samsung's mobile comm division

*"Samsung is aiming for a double-digit market share for global smartphones by the end of this year Samsung's **smartphone sales are likely to double next year** from this year"*[1]

– JK Shin, head of Samsung's mobile comm division

*"[Samsung] expects to ship **10 million [Galaxy Tablet]** units and take a third of the global tablet market next year"*[2]

– Hankil Yoon, Samsung product executive

[1] SE Young Lee "Samsung Expects Profit Boost From Mobile Phones" The Wall Street Journal, Sep 3, 2010
[2] Spencer E. Ante "Phone Giants to Sell Samsung Tablet PC" The Wall Street Journal Sep 11, 2010

Defendants' Exhibit No 586 011

Samsung is a major vendor of advanced mobile computing devices such as smartphones and tablets

Defendants' Exhibit No 586 012

Apple Smartphone Licensing Rates

- $30 USD per Licensed Smartphone
  - Licensed Smartphones touchscreen devices based on --
    - Android units
    - Symbian units
    - Bada, unless Apple proprietary features avoided
    - Windows, others - to be discussed
- $40 USD per Licensed Touchscreen Tablet
  - Reducing to $30 over 2 years

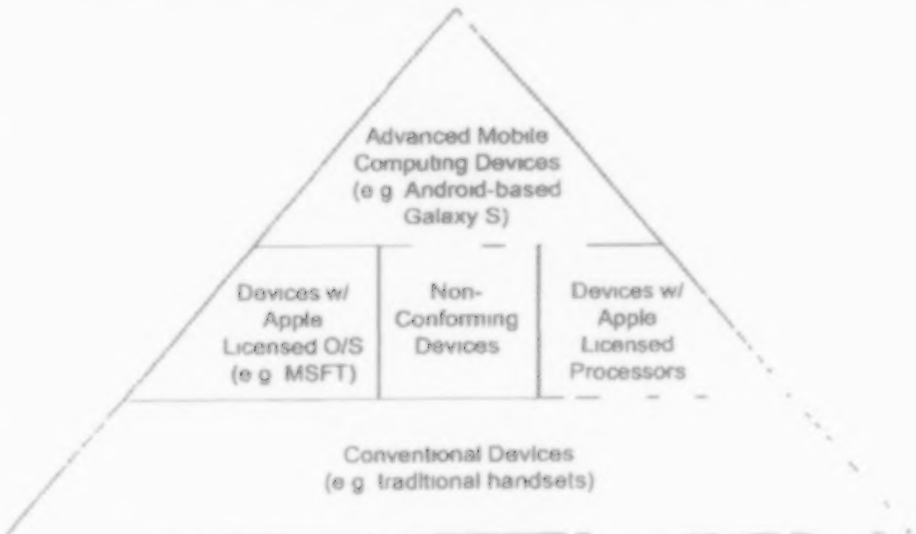
Defendants' Exhibit No 586 013

We will provide Samsung with a number of options for obtaining a cost-effective license to our patent portfolio

Samsung Portfolio	Like other major Apple suppliers Samsung has a substantial patent portfolio, albeit it is largely oriented in supplier-type areas
Apple-licensed O/S	Some Samsung products may make use of an OS largely licensed to Apple patents (e g Windows Mobile)
Apple-licensed Processors	Samsung may wish to encourage its other processor manufacturers to take a license
Not Using Proprietary Features	Some Samsung "smartphone" products may not adopt distinctive industrial designs, software platforms or feature sets
Conventional Mobile Devices	Most Samsung phones are Basic Phones that are not intended to serve as advanced mobile computing devices

Defendants' Exhibit No 586 014

Samsung may avail itself of these options, and in doing so obtain an Apple patent license on the most cost effective basis possible



500

Defendants' Exhibit No 586 015

We will provide Samsung with a number of options for obtaining the most cost-effective possible license to our patent portfolio

Advanced Mobile Computing Device Royalty Rate	$US 30/ unit	x	Samsung Portfolio	20% Discount
			Apple-licensed O/S	40% Discount
Tablet Royalty Rate	$US 40 unit	x	Apple-licensed Processors	20% Discount
			Not Using Propnetary Features	20% Discount

Defendants' Exhibit No 586 016

EXAMPLE 1 Windows-based non-touch device

Samsung Blackjack II™ Smartphone	Samsung Portfolio	Cross license • 20% discount
	Apple-licensed O/S	Microsoft licensed OS tech • 40% discount
	Apple-licensed Processors	n/a
	Not Using Propnetary Features	Physical QWERTY form factor •20% discount
	Total	80% discount

501

Defendants' Exhibit No 586 017

EXAMPLE 2 Android-based full touch screen devices

Samsung Portfolio	Cross license • 20% discount
Apple-licensed O/S	Completely unlicensed Android OS - No discount
Apple-licensed Processors	n/a
Not Using Proprietary Features	Full touch screen device - No discount
Total	20% discount

Defendants' Exhibit No 586 018

Example year 2010

	Windows Mobile	Blackberry & Other	Tablet
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	$30	$30	$4[illegible]
Portfolio Discount	($[illegible]	$[illegible]	($[illegible]
[illegible]	$[illegible]	$[illegible]	$[illegible]
[illegible]	$[illegible]	$[illegible]	$[illegible]
[illegible]	$[illegible]	$[illegible]	$[illegible]
[illegible]	$[illegible]	$[illegible]	$[illegible]
Gross Royalties (in $)	$240	$90	$165	$24
[illegible]	($[illegible]	($[illegible]	($[illegible]	($[illegible]
Net Royalties Due ($),	$[illegible]	$45	$8[illegible]	$ 7
[illegible]				$4[illegible]

- Samsung launched a major offensive, targeting Apple's smartphones and tablets
- Simple calculation of Apple's lost profits based on current market share yields profound lost profits
- These figures pale in comparison to Apple-Samsung's balance-of-trade
- Samsung should respond favorably

DEFENDANTS' EXHIBIT NO 592

Defendants' Exhibit No 592 002

Defendants' Exhibit No 592 003

Why this report?

Purpose The purpose of this study is to provide a comprehensive view of consumer behavior trends in the United States mobile phone market

Key areas include

- Market introduction
- Brand and model
- Operating system
- Demographics
- Usage
- Pricing
- Carrier and channel

What We Learned Q410

With the growth of the smartphone sector, usage among smarthpone owners increases across all categories

- Sending and receiving emails leads with 66% of all smartphones owners using this function on their mobile in the last 4 weeks, closely followed by downloading or using an app at 61%
- The usage profile of iOS and Andrroid owners is remarkably similar across all usage categories except for music Android owners are far less likely to use their mobile phone as a music playing device than iOS owners (38% versus 57%)
- Apple leads on all key usage categories (apps, games, email and Internet), while HTC takes the largest share of usage of all the Android brands
- In terms of age profile, 25 to 49 is the largest user group across the four usage categories
  - A key target for iOS, this age group makes up 63% of its owners
- The primary purchasing reason (across all OS's) is to upgrade from another phone and get a more modern one This is seen most among owners of iOS and Android phones (each 69%)
  - Brand is the overwhelming reason for choice among iOS owners (44%), followed by multimedia functions (30%)
  - For Android owners multimedia functions hold the greatest importance (41%), while brand follows at 24%, likely a result of the different brands Android is available on

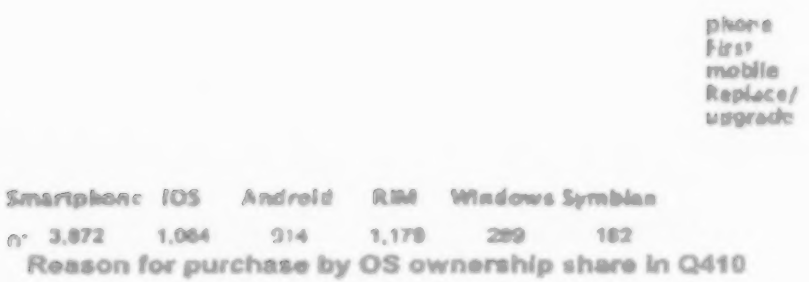
What We Learned Q410

50% of AT&T consumers spend over $170 on their handset versus 26% at Verizon

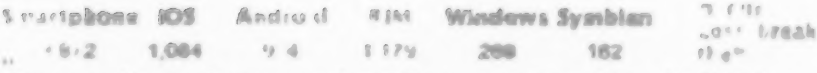
- Sprint's share of the smartphone market increases to 18% from 12% last quarter, while AT&T see a decline, from 40% to 35% quarter on quarter
- Apple continues to dominate AT&T's smartphone offer
  - The iPhone 4 is by far the top selling model, and the price points of Apple products deliver higher value customers to the carrier
- Verizon has maintained its share, both within the overall and smartphone market, despite Sprints increasing share
  - Verizon top smartphones are HTC, Motorola and Samsung Android models
- Carrier storefront remains the main channel to purchase a smartphone, also delivering the highest handset sales value ($165)

Defendants' Exhibit No. 592 023

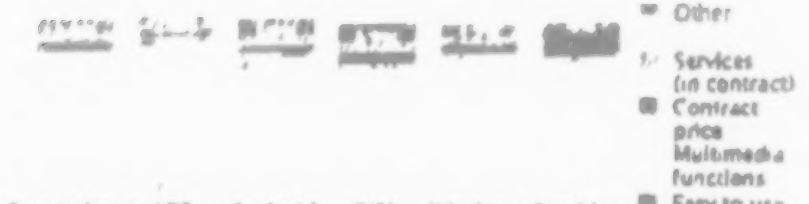
Reason for purchase (ownership)
By OS



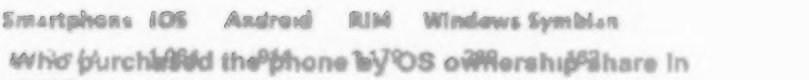
Reason for purchase by OS ownership share in Q410



Reason for replacement by OS ownership share in Q410



Reason for choice by OS ownership share in Q410



Who purchased the phone by OS ownership share in Q410

Samsung Phone Designs

DEFENDANT'S EXHIBIT
NO. 684.001

Before

Bar-type Touch-screen Display

Flipper Mock-up (2006)
F700 Mock-up (2006)
"Slide" Design (2006)
"Vessel" Mock-up (Aug.2006)
"Slide" Design (2006)
Merit (2006)
Card3 (2006)
"Wrap" Model (Aug.2006)
"Frame" Model (Aug.2006)
F300 (Oct. '06)

Bar-type

I700 (3Q, '03)
Blackjack (4Q, '06)

Slide-type

I830 (Jan. '06)
D908 (Aug. '06)

Folder-type

E700 (3Q, '03)
T100 (2002)

After

F700 (Feb. 2007)
i8910 (May 2009)
Jet (Jun.2009)
Impression (Apr. 2009)
Gem (Feb.2011)
Galaxy S2 (2011)
SCH-i500 (2010)
Gravity Touch (June 2010)

Bar-type

Replenish (May 2011)
E590 (Jan. 2007)
Intensity II (July 2010)

Slide-type (FSC)

Reclaim (Jan. 2009)
Gravity (Nov. 2008)

Folder-type

U410 (Oct. 2007)
U700 (3Q, 2007)

DEFENDANTS' EXHIBIT NO 727

CERTIFICATION OF TRANSLATION

I certify that the Korean to English translation of the Korean document entitled *KR30-0418547 (KR30-2005-0030828)* is and accurate and complete rendering of the contents of the source document to the best of my knowledge and ability I further certify that I am a qualified professional translator familiar with both languages with more than twenty years of experience in Korean to English translation of various legal, technical or business documents including a number of legal evidentiary documents submitted to various courts in the United States

December 23, 2011

/s/ Alex N Jo
Alex N. Jo, Translator

Registered Design 30-0418547

(19) Korea Intellectual Property Office (KIPO) (KR)

(12) Official Gazette of Registered Industrial Designs (S)

(52) Classification	H3-30
(45) Publication Date	July 6, 2006
(11) Registration No	30-0418547
(24) Registration Date	June 26, 2006

(51) Int Cl	14-03
(21) Application No	30-2005-0030828
(22) Application Date	September 9, 2005

(73) Design right holder	LG Electronics Co , Ltd 20 Yoido-dong, Youngdeungpo-gu, Seoul, Korea
(72) Inventors	Ah Jeongloo 501 OncheonHaedong Villa, Jangjeon 2-dong Geumjeong-gu, Busan, Korea
(74) Agents	Jang Won Park

Examiner Sun Jin Kim

(54) Portable Phone

Physical Target Object of the Design

Portable phone

Description of the Design

1 It is made of metals and synthetic resin

2 It is a super slim portable phone with an antenna embedded therein

3 It can take photos using the camera constructed on the rear surface

4 Touch-mode function keys and number keys are arrayed at the bottom of the front display window such that they can be visible only when the phone-in-use and camera-in-use are activated after power is turned on The display screen window also employs a touch screen mode to enable the user to use various functions of a portable phone

5 A DMB function is embedded to enable the user to watch the ground wave broadcastings Also, the speaker constructed on the top left enables the user to listen to the broadcastings

Main Points of the Creative Design Contents

The main points of the design of the present portable phone are such that a speaker is formed on top of the main body, the button unit on the front are displayed in a simple and unique shape in a touch screen mode, and a neat and clean image as a whole having no protrusion is emphasized

Registered Design 30-0418547

[Perspective View]

[Frontal View]

Registered Design 30-0418547

[Rear View]

[Left Lateral View]

Registered Design 30-0418547

[Right Lateral View]

[Plan View]

[Bottom View]

DEFENDANTS' EXHIBIT NO 728

[LOGO] TRANSPERFECT
Three Park Avenue
39th Floor
New York, NY 10016
T 212 689 5555
F 212 689 1059
www transperfect com

City of New York, State of New York,
County of New York

I, Afsana Liza, hereby certify that the following is, to the best of my knowledge and belief, a true and accurate translation of the following document from Japanese into English

JP1009317
JP1235888
JP1241383
JP1280315
JP1295003
JP1241638

/s/ Afsana Liza
Afsana Liza

Sworn to before me this
Monday, August 22, 2011

/s/ Kevin M Kelley JR
Signature, Notary Public

KEVIN M KELLEY JR
Notary Public - State of New York
No 01-KE-6229268
Qualified in Queens County
Commission Expires October 4, 2014

Stamp, Notary Public State of New York

(19) [Country of issue] Japan Patent Office (JP)

(45) [Date issued] June 6, 2005 (2005 6 6)

(12) [Type of gazette] Design Gazette (S)

(11) [Registration number] Design registration number 1241383 (D1241383)

(24) [Date registered] April 15, 2005 (2005 4 15)

(54) [Article to the design] Portable information terminal (52) [Design classification] H5-41

(51) [International patent classification (reference)] 14-02

[D terms] HFHBA01, HFHEBOO, FIFHCA03, HFHCBOO

(21) [Application number] Design Application 2004-26856 (D2004-26856)

(22) [Application date] September 3, 2004 (2004 9 3)

(72) [Creator]

[Name] Ayumu Isomura

[Address or domicile] c/o Fuji Photo Film Co , Ltd , 2-26-30 Nishiazabu, Minato-ku, Tokyo

(73)[Holder of design right]

[ID number] 000005201

[Name or title] Fuji Photo Film Co , Ltd

[Address or domicile] 210 Nakanuma, Minami-ashigara-shi, Kanagawa

(74)[Agent]

[ID number] 100075281

[Patent attorney]

[Name or title] Kazunori Kobayashi

[Examiner] Kyoko Kimura

(55) [Description of the article to the design] This article is a portable information terminal consisting of a body portion having an operation portion and image display portion whose front face, plane face, bottom face and left and right side faces are covered with a transparent cover member, as shown in the reference drawings

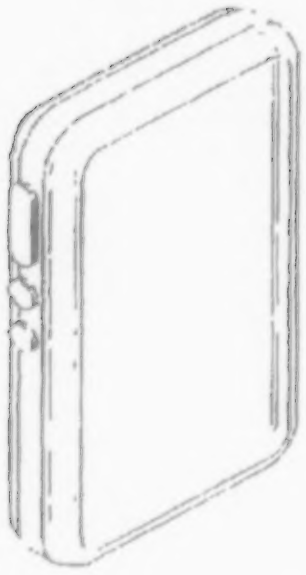
(55) [Description of design] The cover member shown in the reference drawings is transparent overall The portion indicated by hatching in the reference drawings showing the body portion is the transparent image display portion

[Drawings]

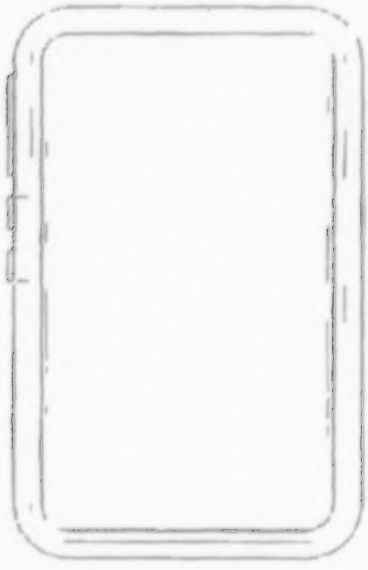
[Perspective view]

Design registration 1241383

(2)



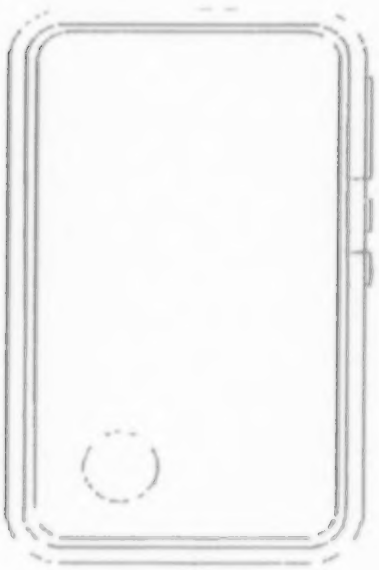
[First view]



[Rear view]

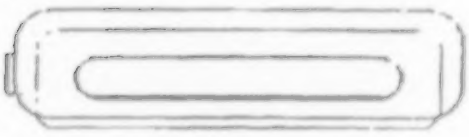
Design registration 1241383

(3)



Design registration 1241383

(4)



[Left side view]

[Right side view]

519

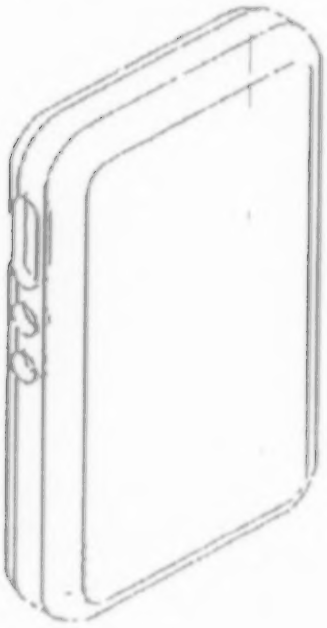
Design registration 1241383

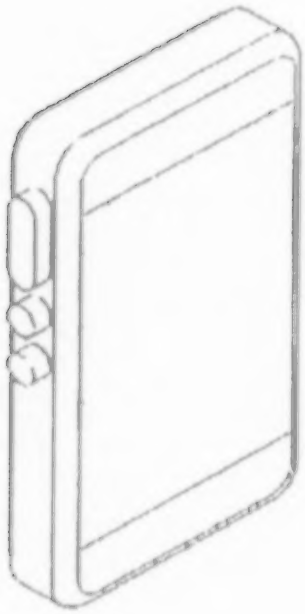
(5)

[A A cake without internal mechanism]

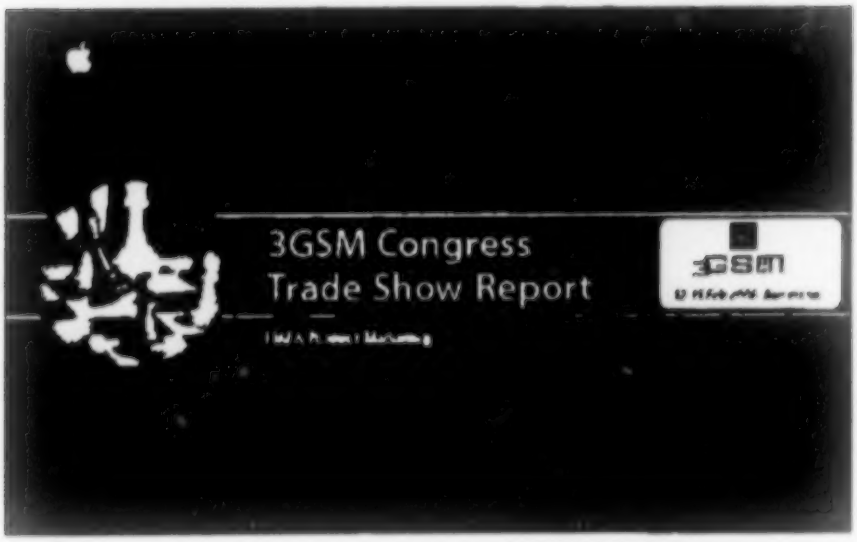
Design registration 1241383

(6)



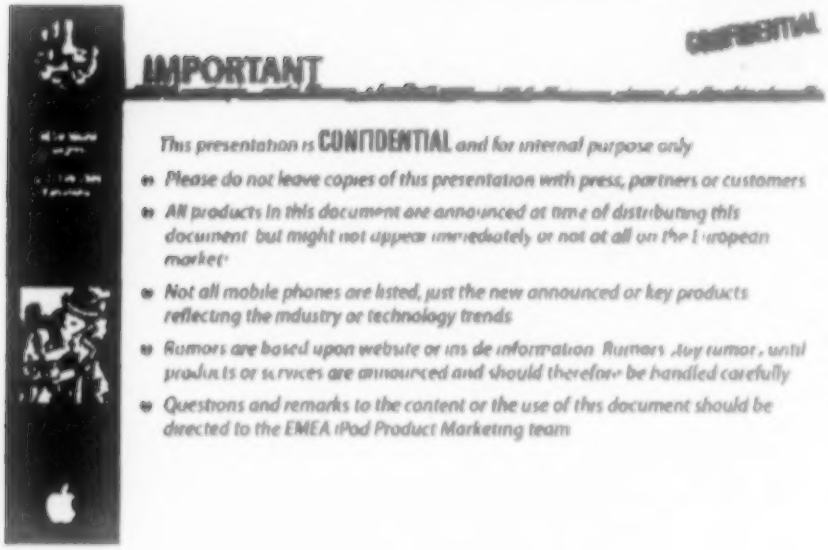


DEFENDANTS' EXHIBIT NO 2627



Defendants' Exhibit No 2627 002

Defendants' Exhibit No 2627 003



Defendants' Exhibit No 2627 024

Defendants' Exhibit No 2627 025

CONFIDENTIAL

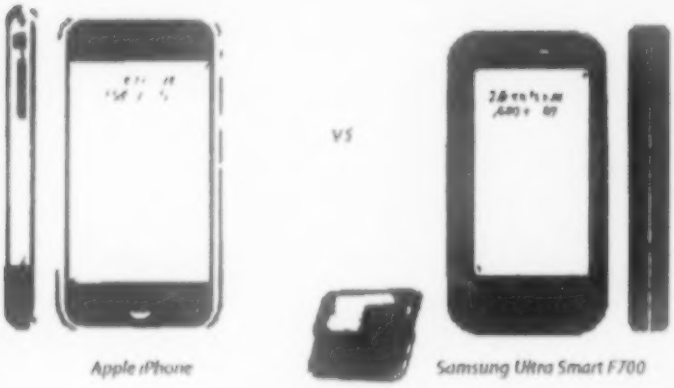
Samsung Ultra Smart F700

- Horizontal sliding full QWERTY keyboard
- Stereo Bluetooth
- 5 MegaPixel with LED flash
- 2.78 (440x240) 262K color touch screen
- Drag & drop touch interface
- Full HTML browser
- MicroSD support
- [illegible] technology
- Tri Band GPRS/EDGE and 2100MHz HSDPA (1.8 Mbps)
- 104 x 50 x 14.9 mm
- Price TBC

Defendants' Exhibit No 2627 026

CONFIDENTIAL

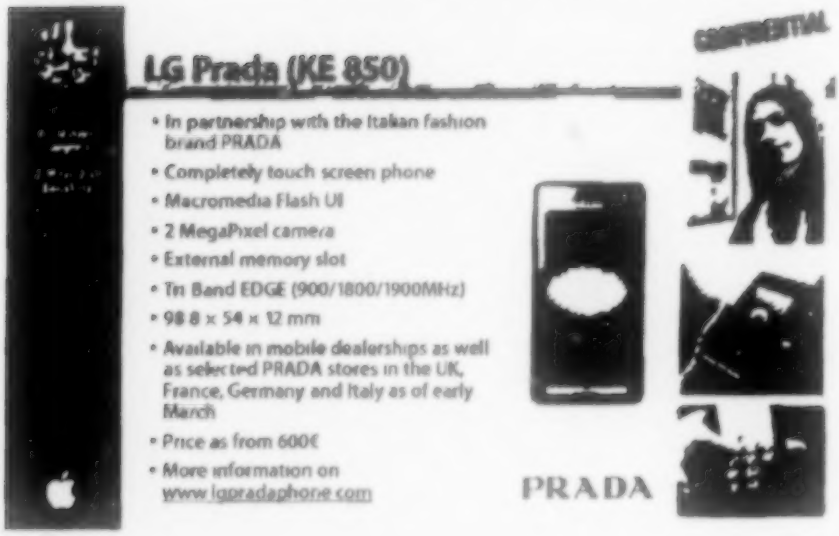
Size comparison: iPhone vs. Ultra Smart F700



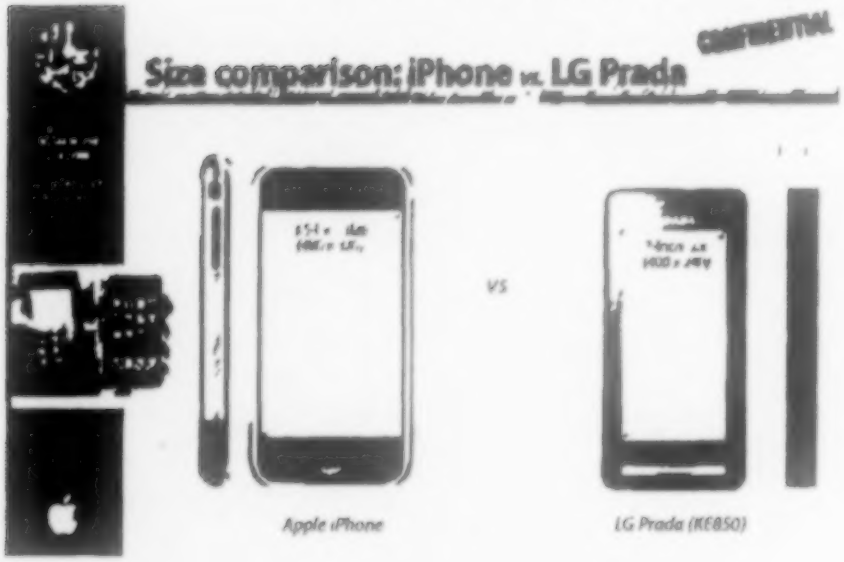
Apple iPhone

Samsung Ultra Smart F700

Defendants' Exhibit No 2627 042



Defendants' Exhibit No 2627 043



DEFENDANTS' EXHIBIT NO 2708

Subject Re Preliminary US Smartphone Purchase Influencers at Retail Study Data

Date Thu, 01 Sep 2011 22 31 46 +0000

From "Philip Schiller" <schiller@apple com>

To "Stan Ng" <stan@apple com>

CC "Greg Joswiak" <joz apple com>, "Arthur Rangel" <arangel@apple com>, "James Imahiro" <imahiro@ apple com>

Message-ID <3E0F47D3-6996-4449-B715-9F69D2005CDD@apple com>

---

okay, not bad ->

I'm glad you got a lot out of it!

On Sep 1, 2011, at 3 23 PM, Stan Ng wrote

> Phil,
>
> Couple other observations that I found useful and actionable
>
> - The importance of the demo unit lets me go back to engineering and put some hard data in front of them to show that we really need a better Retail Demo management solution Not only is it rolled out to 100,000 demo units worldwide, but it is vitally important in selling iPhone as shown in our research
>
> - % usage of non-game apps and game apps, so I can optimize the demo units with the right kinds of apps
>

> - Low usage of video and music, so I can reduce some of the 1 2GB of content, and free up space on demo units to put more apps
>
> - As Joz mentioned, our demo loops are not useful and they suck up a lot of time and resource within MarCom which could be better used for other motion graphics (and again, I can then free up the space for more apps)
>
> - Twice as many Android customers make their decision during the retail store visit as opposed to before Combine that with the data that half of Android customers don't even see our display or merchandising and I start to question our FISO strategy Maybe we just need to stand out I don't know, but it seems worth exploring before our 2012 launch
>
> - We always knew that carrier sales people were weak, but knowing that it is the number one thing that people do and twice as much as anything else really calls into question for me whether we need to attack our carrier shops completely differently Maybe before 2012, we should put our own people in the top 20% of shops? Maybe we need a shop-in-shop concept? Maybe we need a worldwide iPhone "expert" program that can help us "brainwash" some of these sales people? I don't know what the right answer is, but I want to take this to the MarCom and Sales Training teams and light a fire, come up with some proposals for you, and see if they make sense
>
> -stan
>
> On Sep 1, 2011, at 2 26 PM, Philip Schiller wrote:

>
>> hmmmm
>>
>> We always knew that the hands on hits were critical to the iPhone buying experience and that Android, due to its varied OEM model, is sold more in store than an Apple sale

>> And we have always known the weakness of the carrier sales people in our go to market chain, especially evident by the slow growth in advocacy in channels like Verizon

>> My *sensitivity* is that we not waste the research team's time on validating the obvious, researching and exploring is important, but since resources are finite we should use them in the best way possible
>>
>>
>> On Sep 1, 2011, at 1 03 PM, Greg Joswiak wrote
>>
>>> Phil,
>>>
>>> There's actually a number of things that are useful to us in this Examples -- it indicates that our attract loops on the devices aren't very important and that our demo units are hugely important And we should prioritize accordingly
>>>
>>> It also validates the huge reliance Android shopper on the in store sales person and how much the sales person influences the situation -- we need to get better there (e g training?, management advocacy?) Although not as high, the sales person was still by far the biggest factor in iPhone customers decision as well
>>>

>>> While not actionable nor surprising, it was nice to see the validation that our general marketing (and product itself) is working with a much higher percentage of iPhone customers coming into the store knowing they want an iPhone Great marketing and product, good point of sale -- but the sales person is the weak link in the chain

>>>

>>> Joz

>>>

>>> Sent from my iPhone

>>>

>>> On Sep 1, 2011, at 11 27 AM, Philip Schiller wrote·

>>>

>>>> This is one of the kinds of research projects I question the importance of

>>>> I don't see much here that is very revealing or actionable

>>>>

>>>>

>>>> On Sep 1, 2011, at 9 57 AM, Arthur Rangel wrote

>>>>

>>>>> Phil,

>>>>>

>>>>> This is a preliminary analysis of this study which is still fielding and should be completed in a couple of weeks

>>>>> Stan had asked us to put together some preliminary data on this and we shared this with him and Joz on Tuesday

>>>>> They are interested in sharing parts of this with Marcom and wanted to share this with you first
>>>>>
>>>>> The purpose of this study was to quantify the impact key influencers have on the smartphone purchase decision at retail point- of-sale with particular emphasis on iPhone and Android buyers
>>>>>
>>>>> Art
>>>>>
>>>>>
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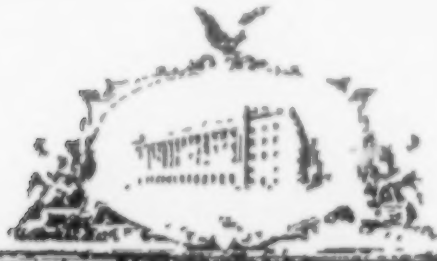

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JOINT TRIAL EXHIBIT NO 1041

APLP 3677/7042

US00D593087S

(12) United States Design Patent
Andre et al

(10) Patent No US D593,087 S

(45) Date of Patent ** May 26, 2009

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(54) ELECTRONIC DEVICE

(75) Inventors
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(73) Assignee Apple Inc , Cupertino, CA (US)

(**) Term 14 Years

(21) Appl No 29/282,833

(22) Filed Jul 30, 2007

Related US Application Data

(63) Continuation of application No 29/270,880, filed on Jan 5, 2007, now Pat No Des 558,756

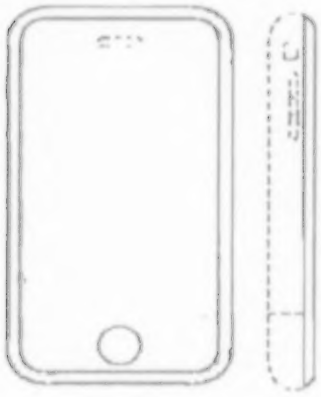
(51) LOC (9) Cl 14-03

(52) U S Cl . D14/341, D14/203 7, D14/138 G

(58) Field of Classification Search D14/137,

D14/138, 147, 191, 218, 247-248, 341-347,
D14/496,138 R, 138 AA, 138 AB, 138 AC, D14/138
AD, 138 C, 138 G, D10/65, 78, D10/104, D13/168,
D18/7, 455/556 1, 455/566, 575 1, 575 3; 345/169

See application file for complete search history



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Primary Examiner—Jeffrey D Asch

Assistant Examiner—Bridget L Eland

(74) Attorney, Agent, or Firm—Sterne, Kessler, Goldstein & Fox P L L C

(57) CLAIM

The ornamental design of an electronic device, substantially as shown and described

DESCRIPTION

FIG 1 is a front perspective view of an electronic device in accordance with the present invention,

FIG 2 is a rear perspective view of the electronic device in FIG 1,

FIG 3 is a front view thereof,

FIG 4 is a rear view thereof,

FIG 5 is a top view thereof,

FIG 6 is bottom view thereof,

FIG. 7 is a left side view thereof,

FIG 8 is a right side view thereof,

FIG 9 is a front perspective view of another embodiment of an electronic device in accordance with the present invention,

FIG 10 is a rear perspective view of the electronic device in FIG 9,

FIG 11 is a front view thereof,

FIG 12 is a rear view thereof,

FIG 13 is a top view thereof,

FIG 14 is bottom view thereof,

FIG 15 is a left side view thereof,

FIG 16 is a right side view thereof,

FIG 17 is a front perspective view of another embodiment of an electronic device in accordance with the present invention,

FIG 18 is a rear perspective view of the electronic device in FIG 17,

FIG 19 is a front view thereof,

FIG 20 is a rear view thereof,

FIG 21 is a top view thereof,

FIG 22 is bottom view thereof,

FIG 23 is a left side view thereof,

FIG 24 is a right side view thereof,

FIG 25 is a front perspective view of another embodiment of an electronic device in accordance with the present invention,

FIG 26 is a rear perspective view of the electronic device in FIG 25,

FIG 27 is a front view thereof,

FIG 28 is a rear view thereof,

FIG 29 is a top view thereof,

FIG 30 is bottom view thereof,

FIG 31 is a left side view thereof,

FIG 32 is a right side view thereof,

FIG 33 is a front perspective view of another embodiment of an electronic device in accordance with the present invention,

FIG 34 is a rear perspective view of the electronic device in FIG 33,

FIG 35 is a front view thereof,

FIG 36 is a rear view thereof,

FIG 37 is a top view thereof,

FIG 38 is bottom view thereof,

FIG 39 is a left side view thereof,

FIG 40 is a right side view thereof,

FIG 41 is a front perspective view of another embodiment of an electronic device in accordance with the present invention,

FIG 42 is a rear perspective view of the electronic device in FIG 41,

FIG 43 is a front view thereof,

FIG 44 is a rear view thereof,

FIG 45 is a top view thereof,

FIG 46 is bottom view thereof,

FIG 47 is a left side view thereof, and,

FIG 48 is a right side view thereof

The broken lines showing the remainder of the electronic device are directed to environment The broken lines, within the claimed design, in embodiments 1, 2, and 4 that depict an elongated oval shape and the broken lines, within the claimed design, in embodiments 2, 3, and 6 that depict a circle shape are superimposed on a continuous surface and are for illustrative purposes only The broken lines, within the claimed design, in embodiments 1, 3, and 5 that depict a large rectangular shape, indicate a non claimed shape below the continuous front surface and are for illustrative purposes only None of the broken lines form a part of the claimed design

1 Claim, 12 Drawing Sheets

FIG 1

FIG 2

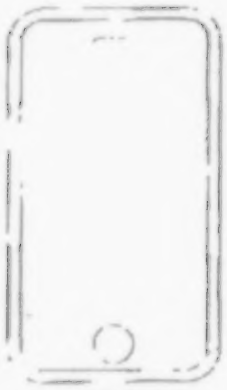


FIG 3

FIG 4

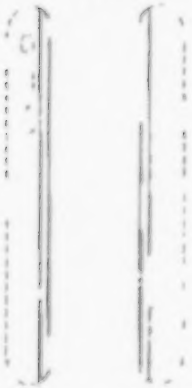


FIG 7

FIG 8

FIG 5

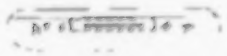


FIG 6

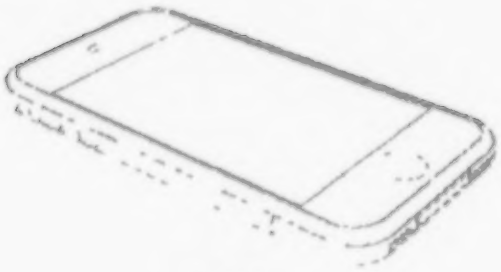


FIG 9

FIG 10

FIG 11

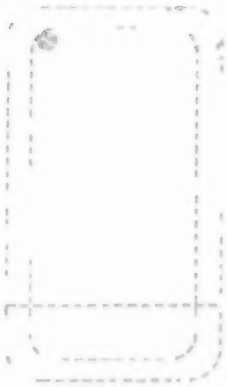


FIG 12

FIG 13

FIG 14

FIG 15

FIG 16

FIG 17

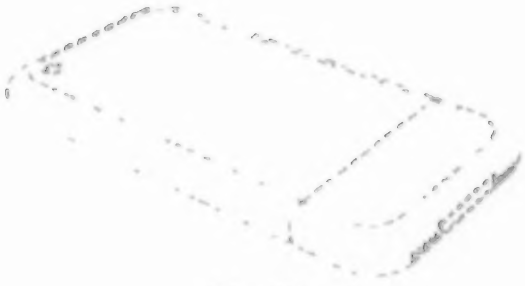
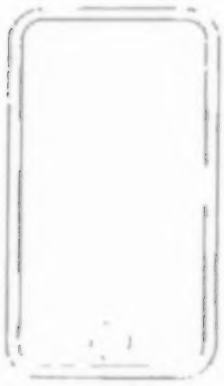


FIG 18



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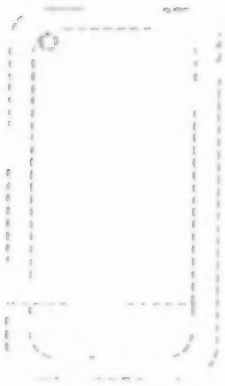

FIG 20

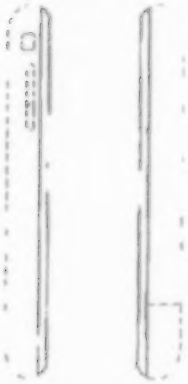

FIG 23

FIG 24

FIG 21

FIG. 22

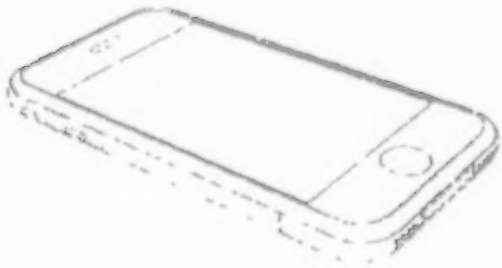

FIG 25

FIG 26

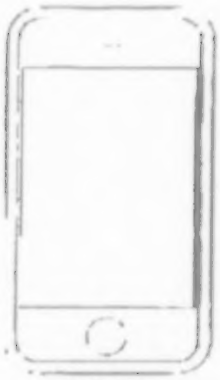

FIG 27

FIG 28

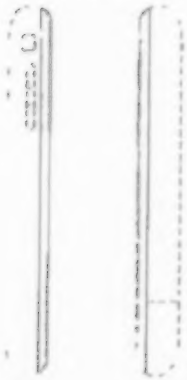

FIG 31

FIG 32

FIG 29

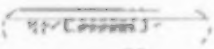

FIG 30

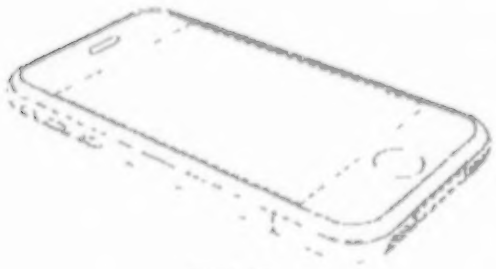

FIG 33

FIG 34

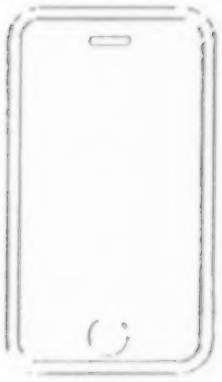

FIG 35

FIG 36

FIG 37

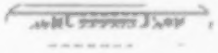

FIG 38

FIG 39

FIG 40

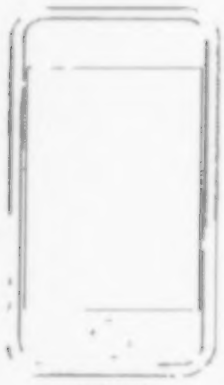

FIG 43

FIG 44

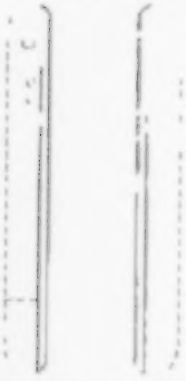

FIG 47

FIG 48

FIG 45

FIG 46

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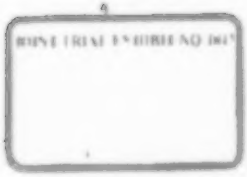
[illegible]

Authentication Officer



US00D604305S

(12) United States Design Patent
Andre et al

(10) Patent No US D604,305 S

(45) Date of Patent: ** *Nov 17, 2009

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(54) GRAPHICAL USER INTERFACE FOR A DISPLAY SCREEN OR PORTION THEREOF

(75) Inventors Freddy Anzures, San Francisco, CA (US), Imran Chaudhri, San Francisco, CA (US)

(73) Assignee Apple Inc , Cupertino, CA (US)

(**) Term 14 Years

(21) Appl No 29/281,460

(22) Filed Jun. 23, 2007

(51) LOC (9) Cl 32-00

(52) U S CL D14/486

(58) Field of Classification Search D14/485-95, D18/24-33, D19/6, 52, D20/11, D21/324-33, 715/700-867, 973-77
See application file for complete search history

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Primary Examiner-Melanie H Tung

(74) *Attorney, Agent,* or *Firm*-Sterne, Kessler, Goldstein & Fox P L.L C

(57) CLAIM

The ornamental design for a graphical user interface for a display screen or portion thereof, as shown and described

DESCRIPTION

The patent file contains at least one drawing executed in color Copies of this patent with a color drawing will be provided by the Office upon request and payment of the necessary fee

FIG 1 is a front view of a graphical user interface for a display screen or portion thereof showing our new design, and,

FIG 2 is a front view of a second embodiment thereof

The broken line showing of a display screen in both views forms no part of the claimed design

1 Claim, 2 Drawing Sheets
(1 of 2 Drawing Sheet(s) Filed in Color)

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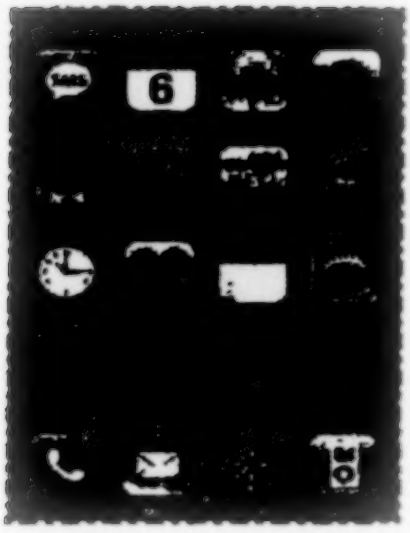


FIG. 1

FIG. 2

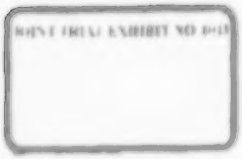
Replacement Sheet
Sheet 1 of 2
Appl No 29/281,460, Filed June 23, 2007
Dkt No 2607 0100000(P5548US1); Group Unit. 2911
Tel No 202-371-2600
For Graphical User Interfaces For A Display Screen or Portion Thereof *(as amended)*

FIG. 1

Replacement Sheet
Sheet 2 of 2
Appl No 29/281,460, Filed June 23, 2007
Dkt No 2607 0100000(P5548US1), Group Unit 2911
Tel No 202-371-2600
For Graphical User Interfaces For A Display Screen or Portion Thereof *(as amended)*

FIG. 2

JOINT TRIAL EXHIBIT NO 1043



US00D618677S

(12) United States Design Patent
Andre et al

(10) Patent No US D618,677 S

(45) Date of Patent ** *Jun 29, 2010

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(54) ELECTRONIC DEVICE

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(*) Notice This patent is subject to a terminal disclaimer

(**) Term 14 Years

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(22) Filed Nov 18, 2008

Related U S Application Data

(60) Division of application No. 29/282,834, filed on Jul 30, 2007, now Pat No Des 581,922, which is a continuation of application No 29/270,888, filed on Jan 5, 2007, now Pat No Des 558,758

(51) LOC (9) CI 14-02

(52) U S CL D14/341, D14/248, D14/203 7

(58) Field of Classification Search D14/341, D14/342, 343, 344, 345, 346, 347, 420, 426, D14/427, 432, 439, 440, 441, 448. 496, 125, D14/137, 129, 130, 138, 250, 389, 147, 218, D14/247, 248, 156, D10/65, 104, D13/168, D18/6, 7, D21/329, 686, 455/90 3, 556 1, 455/556 2, 575 1, 575 3, 575 4, 379/433 01, 379/433 04, 433 06, 433 07, 361/814, 341/22, 345/169, 173, D6/596, 601, 605

See application file for complete search history

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Assistant Examiner-Angela J Lee

(74) *Attorney, Agent, or Firm*-Sterne, Kessler, Goldstein & Fox PLLC

(57) CLAIM

The ornamental design of an electronic device, as shown and described

DESCRIPTION

FIG 1 is a front perspective view of an electronic device in accordance with the present invention,

FIG 2 is a rear perspective view thereof,

FIG 3 is a front view thereof,

FIG 4 is a rear view thereof,

FIG 5 is a top view thereof,

FIG 6 is bottom view thereof,

FIG 7 is a left side view thereof, and,

FIG S is a right side view thereof

The claimed surface of the electronic device is illustrated with the color designation for the color black

The electronic device is not limited to the scale shown herein As indicated in the title, the article of manufacture to which the ornamental design has been applied is an electronic device, media player (e.g , music, video and/or game player), media storage device, a personal digital assistant, a communication device (e g , cellular phone), a novelty item or toy.

1 Claim, 2 Drawing Sheets

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U.S. Patent Jun. 29, 2010 Sheet 1 of 2 US D618,677 S

FIG. 1

FIG 2

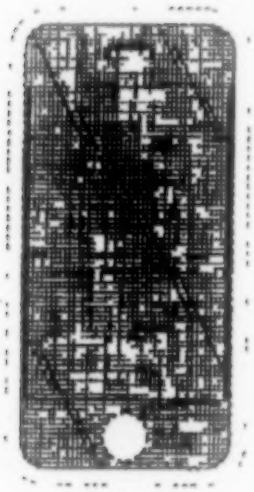

FIG. 3

FIG. 4

FIG 7

FIG 8

FIG. 5

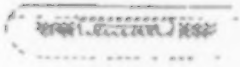

FIG 6